CONSOLIDATED ONTARIO INSURANCE STATUTES AND REGULATIONS 1997

First Supplement

Publisher's Note

This supplement contains the following regulations made under the *Insurance Act*:

Amending Regulations

O. Reg. 760/94 — amends R.R.O. 1990, Reg. 663 (Agents' Licences)
O. Reg. 399/96 — amends R.R.O. 1990, Reg. 664 (Automobile Insurance)
O. Reg. 400/96 — amends R.R.O. 1990, Reg. 676 (Uninsured Automobile Coverage)
O. Reg. 463/96 — amends O. Reg. 776/93 (Statutory Accident Benefits Schedule — Accidents on or after January 1, 1994)
O. Reg. 464/96 — amends R.R.O. 1990, Reg. 664 (Automobile Insurance)

New Regulations

O. Reg. 401/96 — Assessment of Health System Costs
O. Reg. 402/96 — Insurance Card
O. Reg. 403/96 as amended by O. Reg. 462/96 — Statutory Accident Benefits Schedule — Accidents on or after November 1, 1996
O. Reg. 461/96 — Court Procedings for Automobile Accidents that Occur on or after November 1, 1996;

This supplement should be inserted in the pocket attached inside the back cover of *Consolidated Ontario Insurance Statutes and Regulations 1997.*

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REGULATIONS UNDER THE INSURANCE ACT

REGULATION 663

AGENT'S LICENCES

Title

The title is revoked and the following substitued (O. Reg. 760/94, s. 1):

AGENTS

Sections 1 and 2

Sections 1 and 2 are revoked and the following substituted (O. Reg. 760/94, s. 2):

DEFINITIONS

1. In this Regulation,

"full-time" means 30 hours or more per week as averaged over the most recent three-month period;

"Level II life insurance examination" means an examination set by the Superintendent for agents who have held life insurance licences for at least two years;

"life insurance licence" means a license referred to in clause 393(2)(a) of the Act.

LICENCES

1.1 Where an application for a licence is made by a corporation, a separate application shall be made in the corporate name by any shareholder to whom has been issued or who is entitled to more than one-half of the issued shares of the corporation.

2. (1) No individual, partnership or corporation shall act as an agent unless the individual, partnership or corporation is licensed under this Regulation.

(2) Subsection (1) applies to an individual, corporation or partnership who acts as an agent even if they are an employee, director, officer, shareholder or partner of an agent licensed under this Regulation.

Section 3

Subsection 3(1) is revoked and the following substituted (O. Reg. 760/94, s. 3(1)):

(1) An application for an agent's licence shall be accompanied by,

(a) the certificate of an insurer certifying that the applicant is appointe to act as the insurer's agent; and

(b) a statement by the insurer indicating that it is satisfied that the appli cant is suitable to carry on business as an agent.

(1.1) Subsection (1) does not apply to an application by a corporation o partnership for a life insurance licence.

(1.2) If the applicant is a partnership, the application shall state the date o the formation of the partnership.

Subsection 3(2) is amended by striking out ''and'' at the end of clause (a) an by revoking clause (b) and substituting the following (O. Reg. 760/94, s. 3(2)):

(b) the names of the directors and officers of the corporation and of an shareholders who hold shares that entitle them to voting rights, th addresses of their places of residence, their occupations and, in th case of the shareholders, the number and class of shares held; and

(c) the names of all individuals, corporations and partnerships that ar authorized to act as agents on behalf of the applicant.

Subsection 3(3) is amended by striking out ''insurance agent'' in the fourth lin and substituting ''agent'' (O. Reg. 760/94, s. 3(3)).

Section 4

Clause 4(1)(b) is revoked and the following substituted (O. Reg. 760/94, s. 4(1))

(b) is possessed of a reasonable educational background, if the applican is an individual:

Clause 4(1)(d) is revoked and the following substituted (O. Reg. 760/94, s. 4(2))

(d) has passed a qualifying examination set by the Superindendent for th pupose, if the applicant is an individual;

Clause 4(1)(f) is amended by striking out ''insurance agent'' in the last line an substituting ''agent'' (O. Reg. 760/94, s. 4(3)):

Clause 4(1)(g) is amended by striking out ''insurance agent'' in the second lin and substituting ''agent'' (O. Reg. 760/94, s. 4(4)):

Clause 4(1)(h) is revoked and the following substituted (O. Reg. 760/94, s. 4(5))

(h) is not in a position to offer inducement or use coercion or undu influence in order to control, direct or secure insurance business and if the applicant is a corporation, no director, officer, shareholder o employee of the corporation is in a position to offer inducement or us coercion or undue influence in order to control, direct or secure in surance business.

Subsection 4(2) is amended by striking out the portion before clause (a) and substituting the following (O. Reg. 760/94, s. 4(6)):

(2) Without limiting the generality of clause (1)(h), if the application is for a licence referred to in clause 393(2)(b) or (c) of the Act, the applicant shall be deemed to be in a position to offer inducement or use coercion or undue influence in order to control, direct or secure insurance business if the applicant is,

. . . . .

Clause 4(2)(f) is amended by striking out ''subclauses 5(3)(b)(i) and (ii)'' and substituting ''clauses 5(6)(a) and (b)'' (O. Reg. 760/94, s. 4(7)):

Section 4 is amended by adding the following subsections (O. Reg. 760/94, s. 4(8)):

(2.1) Subsection (2) does not apply if the applicant is also applying for a life insurance licence or if the applicant already holds a life insurance licence.

(2.2) Without limiting the generality of clause (1)(h), if the application is for a life insurance licence, the applicant shall be deemed to be in a position to offer inducement or use coercion or undue influence in order to control, direct or secure insurance business if the applicant is,

(a) an officer or employee of a bank or other deposit-taking institution, a loan corporation or a finance company;

(b) a doctor or a dentist;

(c) a lawyer or an employee thereof;

(d) an accountant, auditor or trustee in bankruptcy;

(e) a police officer;

(f) a member of the clergy or a minister;

(g) a mortgage broker who is not also registered as a real estate broker under the *Real Estate and Business Brokers Act;*

(h) a full-time employee of the Government of Canada or any branch thereof, of any municipal or provincial government in Canada or any branch thereof or of a Crown corporation;

(i) a person occupying office space in the office of any person referred to in clause (a) to (h).

Subsection 4(3) is amended by striking out ''of the province or state'' in the third line and substituting ''of the province or territory of Canada or the state of the United States of America'' (O. Reg. 760/94, s. 4).

Subsection 4(4) is revoked (O. Reg. 760/94, s. 4(10)):

Sections 5 and 6

Sections 5 and 6 are revoked and the following substituted (O. Reg. 760/94, s 5):

5. (1) A licence referred to in clause 393(2)(b) or (c) of the Act or the renewa of such a licence shall not be granted unless,

(a) the applicant is working or intends to work as an agent on a full-tim basis; and

(b) the sole business, occupation or employment of the applicant is that o an agent.

(2) Subsection (1) does not apply if the applicant is also applying for a lif insurance licence or if the applicant already holds a life insurance licence.

(3) A life insurance licence or the renewal of a life insurance licence shal not be granted to an individual unless the applicant intends to have his or he sole business in the provision of financial services.

(4) Subsection (3) does not apply if the applicant has held a life insuranc licence for at least two years and,

(a) the applicant has passed the Level II life insurance examination; or

(b) the Superintendent is satisfied that the agent has the qualification tested by the Level II life insurance examination.

(5) subsections (1) and (3) do not apply to an applicant who carries on th main portion of his, her or its business as an agent in a township having population of less than 10,000 or in any other municipality having a populatio of less than 5,000.

(6) Subsections (1) and (3) do not apply to an applicant who,

(a) carries on business as a travel agent registered under the *Travel In dustry Act* and whos activities as an agent are restricted to travel accident and baggage insurance; or

(b) carries on business as a real estate broker or real estate salesperson

(7) The Superintendent may require an applicant for a licence or renewa of a licence to verify by statutory declaration that,

(a) for the purpose of subsection (1), the applicant complies with clause (1)(a) and (b); or

(b) for the purpose of subsection (3), the applicant intends to have his o her sole business in the provision of financial services.

6. No licence shall be issued to a corporation incorporated or with its hea office outside Canada or to a partnership in which any partner is resident outsid Canada unless the corporation or partnership held a licence on July 6, 1961 an was one to which a predecessor of this section applied on that date.

Section 9

Section 9 is revoked and the following substituted (O. Reg. 760/94, s. 6):

9. (1) The licence of an individual expires on the first anniversary of his or her birth that follows the second anniversary of the date the licence was last issued or renewed.

(2) The licence of a corporation expires on the first anniversary of the corporation's incorporation that follows the second anniversary of the date the licence was last issued or renewed.

(3) The licence of a partnership expires on,

(a) the first anniversary of the date specified under subsection 3(1.2) that follows the second anniversary of the date the licence was last issued or renewed; or

(b) if the licence was last issued or renewed before Ontario Regulation 760/94 came into force, on January 1, 1997.

(4) Subsections (1) to (3) do not apply if a different expiration date is specified in the licence.

Section 10

Section 10 is amended by adding the following subsection (O. Reg. 760/94, s. 7(1)):

(1.1) Despite subsection (1), subsection 3(1) of this Regulation and subsections 393(3) and (4) of the Act do not apply in respect of an application for the renewal of a life insurance licence if the applicant has held the licence for at least two years and,

(a) the applicant has passed the Level II life insurance examination; or

(b) the Superintendent is satisfied that the agent has the qualifications tested by the Level II life insurance examination.

Subsection 10 (2) is amended by striking out "and" at the end of clause (a) and by adding the following clauses (O. Reg. 760/94, s. 7(2)):

(c) a statement certifying what continuing education courses have been completed by the applicant since the licence was issued or last renewed;

(d) a statement certifying that the applicant maintains errors and omissions insurance in accordance with section 17; and

(e) such other information as the Suprintendent may require.

Section 10 is amended by adding the following subsections (O. Reg. 760/94, s. 7(3)):

(4) An application for renewal of a life insurance licence may be refused if the applicant is not in compliance with section 17 or 18.

(5) An application by an individual for renewal of a life insurance licen shall be refused if,

(a) the applicant has held a life insurance licence for four years or mo

(b) the applicant has not passed the Level II life insurance examinatio and

(c) the Superintendent is not satisfied that the agent has the qualificatio tested by the Level II life insurance examination.

Section 11

Section 11 is amended by adding the following subsection (O. Reg. 760/94, 8):

(3) Subsections (1) and (2) and subsection 393(6) of the Act do not apply respect of an agent who holds a life insurance licence if,

(a) the agent is a corporation or partnership; or

(b) the agent has held the licence for at least two years and has notifi the insurer that,

(i) the agent has passed the Level II life insurance examination; o

(ii) the Superintendent is satisfied that the agent has the qualificatio tested by the Level II life insurance examination.

Section 12

Section 12 is amended by adding the following subsection (O. Reg. 760/94, 9):

(2) Subsection (1) does not apply in respect of an agent who holds a l insurance licence if the agent has held the licence for at least two years and,

(a) the applicant has passed the Level II life insurance examination; or

(b) the Superintendent is satisfied that the agent has the qualificatio tested by the Level II life insurance examination.

Clause 13(a)

Clause 13(a) is amended by striking out ''insurance agent'' in the last line a substituting ''agent'' (O. Reg. 760/94, s. 10).

Sections 14 and 15

Sections 14 and 15 are revoked and the following substituted (O. Reg. 760/9 s. 11):

14. (1) The superintendent may suspend, revoke or refuse to renew a licen referred to in clause 393(2)(b) or (c) of the Act if, during the term of the licen the licensee has,

(a) carried on any business or occupation other than as an an agent; or

(b) carried on the business of an agent other than on a full-time basis.

(2) The Superintendent may suspend, revoke or refuse to renew a life insurance licence if the licensee is an individual and, during the term of the licence, the licensee has carried on a business or occupation that is not in the provision of financial services.

(3) Subsections (1) and (2) do not apply if,

(a) the only other business or occupation carried on by the licensee is a business referred to in clause 5(6)(a) or (b); or

(b) the licensee carries on the main portion of his, her or its business as an agent in a township having a population of less than 10,000 or in any other municipality having a population of less than 5,000.

(4) Subsection (2) does not apply if the licensee has held the license for at least two years and,

(a) the licensee has passed the Level II life insurance examination; or

(b) the Superintendent is satisfied that the agent has the qualifications tested by the Level II life insurance examination.

15. Clauses 5(1) and 14(1)(b) do not apply to an applicant who was licensed as an agent on August 15, 1986.

EXEMPTIONS FFROM LICENSING

15.1 (1) Subsection 393(23) of the Act and section 2 of this Regulation do not apply to the following persons in the following circumstances:

1. A collector of insurance premiums who does not solicit applications for or the renewal or continuance of insurance contracts or act or aid in negotiating insurance contracts or the renewal of insurance contracts, if the collector's collection fee does not exceed 5 per cent of any amount collected.

2. An officer or a salaried employee of the head office of a fraternal society who solicits insurance contracts on behalf of the society and does not receive any commission.

3. A member of a fraternal society who solicits insurance contracts on behalf of the society and who is not an officer or salaried employee described in paragraph 2, unless the member devotes or intends to devote more than half of his or her time to soliciting such contracts or has in the previous 12 months solicited and procured life insurance contracts on behalf of the society in an amount in excess of $20,000.

4. An officer or salaried employee of the head office of an insurer who

solicits contracts of life insurance, accident insurance and sickn insurance on behalf of the insurer and who does not receive any co mission.

5. A transportation company or an officer or employee of a transpor tion company, when acting as an agent for an insurer with respec travel, accident and baggage insurance.

(2) Paragraph 4 of subsection (1) does not apply without the written proval of the Superintendent to an officer or employee whose application fo licence as an agent has been refused or whose licence as an agent has b revoked or suspended.

DUTIES OF INSURERS

15.2 (1) Every insurer that authorizes one or more agents to act on beh of the insurer shall establish and maintain a system that is reasonably desig to ensure that each agent complies with the Act and the regulations.

(2) The system referred to in subsection (1) must screen each agent suitability to carry on business as an agent.

(3) An insurer shall report ot the Superintendent if it has reasonable grou to believe that an agent who acts on behalf of the insurer is not suitable to ca on business as an agent.

Section 16

Section 16 is amended by adding the following subsection (O. Reg. 760/94 12):

(2) Subsection (1) does not apply in respect of an agent who holds a insurance licence.

Sections 17 to 20

The Regulation is amended by adding the following section (O. Reg. 760/94 13):

DUTIES OF LIFE INSURANCE AGENTS

17. An agent who holds a life insurance licence shall maintain,

(a) errors and ommissions insurance in a form approved by the Sup intendent in an amount of at least $1,000,000 in respect of any occurrence with extended coverage for loss resulting from fraudul acts; or

(b) another form of financial guarantee in a form approved by the Sup intendent in an amount of at least $1,000,000 in respect of any occurrence.

18. An individual who holds a life insurance licence shall complete at least 30 hours every two years of continuing education acceptable to the Superintendent in respect of life insurance.

19. (1) An individual who holds a life insurance licence shall disclose in writing the names of all the insurers that the individual represents to every prospective insured and to every insured who makes an application to renew or replace a policy of life insurance.

(2) An individual who holds a life insurance licence shall disclose in writing the names of all the providers of financial products or services that the individual represents to every prospective purchaser of a financial product or service other than insurance.

20. An agent who holds a life insurance licence shall not,

(a) offer inducement or use coercison or undue influence in order to control, direct or secure insurance business;

(b) induce or attempt to induce an insured, directly or indirectly, contrary to the insured's interests, to,

(i) lapse,

(ii) surrender for cash paid up or extended insurance, or other valuable consideration, or

(iii) subject to substantial borrowing whether in a single loan or over a period of time,

any contract with one insurer of life insurance that contains provision for cash surrender and paid up values for the purpose of effecting a contract of life insurance with another insurer;

(c) make a false and misleading statement or representation in the solicitation or registration of insurance;

(d) make or deliver any incomplete comparison of any policy or contract of insurance with that of any other insurer in the solicitation or registration of insurance;

(e) coerce or propose, directly or indirectly, to coerce a prospective buyer of life insurance through the influence of a professional or a business relationship or otherwise to give a preference with respect to the policy of life insurance that would not otherwise be given on the effecting of a life insurance contract; or

(f) hold himself, herself or itself out, directly or indirectly, by representation or ommission, in a way that is misleading in respect of the insurers on whose behalf the agent acts.

REGULATION 664

AUTOMOBILE INSURANCE

Heading

The heading immediately preceding section 1 of Regulation 664 is struck and the following substituted (O. Reg. 464/96, s.1):

DEFINITIONS

Subsection 3(2)

Paragraph 2 of subsection 3(2) is revoked and the following substituted (O. R 464/96, s. 2):

(2) The contract is written on Ontario Automobile Policy 1 or Onta Policy Form 2.

Section 5.1

Section 5.1 is revoked (O. Reg. 464/96, s. 3).

Section 8.1

Section 8.1 is revoked and the following substituted (O. Reg. 399/96, s. 1):

8.1 The following classes of contracts are prescribed for the purpose subsection 263(5.1) of the Act:

1. **Contracts written on Ontario Automobile Policy 1.**
2. **Contracts written on Ontario Policy Form 4.**

Section 12

Section 12 is amended by adding the following subsection (O. Reg. 464/96 4):

(2) An arbitrator may award expenses to an insurer or insured per under subsection 282(11) of the Act if the arbitrator is satisfied that the aw is justified, having regard to the following criteria:

1. **Each party's degree of success in the outcome of the proceeding.**
2. **Conduct of the insurer or the insured person that tended to shor or facilitate the proceeding or that tended to prolong, obstruct hinder the proceeding, including failure to comply with undertaki or orders.**
3. **Whether the proceeding or any position taken by the insurer or**

insured person during the proceeding was manifestly unfounded, frivolous, vexatious, fraudulent or an abuse of process.

4. **The degree of complexity, novelty or significance of the factual or legal issues raised in the proceeding.**

5. **If the insurer or the insured person requests, any written offers to settle made after the conclusion of mediation and before the conclusion of the arbitration in accordance with the rules of practice and procedure applicable to the proceeding, including the terms of the offers, the timing of the offers and the responses to the offers, having regard to the result of the proceeding.**

6. **Any other matter related to the proceeding that the arbitrator considers relevant to the issue of whether an award of expenses is justified.**

Section 14.1

The Regulation is amended by adding the following section (O. Reg. 399/96, s. 2):

PRESCRIBED ELEMENTS OF RISK CLASSIFICATION SYSTEM
(*Sections 410 to 417 of the Act*)

14.1 For the purpose of section 260 of the Act, insurers shall use the following element of a risk classification system in classifying risks for loss of or damage to an automobile or loss of its use:

1. A deductible of $300, unless the contract provides for a different amount.

Section 15

The heading immediately preceding section 15 is struck out and the following substituted (O. Reg. 464/96, s. 5(1)):

APPLICATION OF SECTIONS 410 TO 417 OF THE ACT

Subsections 15(1) and (2) are revoked and the following substituted (O. Reg. 464/96, s. 5(2)):

(1) Sections 410 to 417 of the Act apply in respect of contracts of automobile insurance written on Ontario Automobile Policy 1 or Ontario Policy Form 2.

(2) Sections 410 to 417 of the Act apply in respect of all types of endorsements to contracts of automobile insurance written on Ontario Automobile Policy 1 or Ontario Policy Form 2.

Subsection 15(3) is amended by striking out "sections 412 to 417" in the first line and substituting "sections 410 to 417" (O. Reg. 464/96, s. 5(3)).

Section 15.1

The Regulation is amended by adding the following section (O. Reg. 464/96, s. 6):

EXPEDITED RISK CLASSIFICATION AND RATE APPROVAL
(*Section 411 of the Act*)

15.1 (1) The percentage prescribed for the purpose of paragraph 1 subsection 411(1) of the Act is, for each coverage and category of automo insurance, the percentage difference between the average of the insurer's exis rates for that coverage and category and the average of the insurer's propc rates.

(2) For the purpose of paragraph 1 of subsection 411(1) of the Act, proposed rates must meet the following additional criteria:

1. **The proposed rates relate only to the Personal Vehicles — Pri Passenger Automobiles category of automobile insurance.**
2. **The effective date of the proposed rates for the insurer's rene business is on or after January 1, 1997.**
3. **The average cumulative rate change for all coverages, calculate accordance with the Section 411/412 Filing Guidelines publishec the Ontario Insurance Commission, as they may be amended fi time to time, is less than or equal to zero.**
4. **The percentage difference, for each territory used by the insu between the average of the existing rates for each coverage and average of the proposed rates for that coverage is not more than 5 cent higher or lower than the percentage difference, for all of Ont between the average of the existing rates for that coverage and average of the proposed rates for that coverage.**
5. **No changes are proposed to the rating algorithm, differentials, counts or surcharges used to determine the proposed rates.**

(3) For the purpose of paragraph 2 of subsection 411(1) of the Act, proposed risk classification system may not contain,

- **(a) any new element; or**
- **(b) any existing element that uses a different definition or different ra rules.**

Section 16

The heading immediately preceding section 16 is struck out and the follo substituted (O. Reg. 464/96, s. 7(1)):

PROHIBITED RISK CLASSIFICATION ELEMENTS
(*Sections 410 to 417 of the Act*)

Section 16 is amended by adding the following subsection (O. Reg. 464/9 7(2)):

(4.1) No element of a risk classification system shall use a lapse in a mobile insurance coverage unless,

- **(a) the insured person contravened section 32 of the *Compulsory A mobile Insurance Act* during the lapse in coverage; or**

(b) the lapse of coverage resulted directly or indirectly from,

(i) the termination of a policy of automobile insurance as a result of the insured person's failure to pay the premiums due under the policy,

(ii) the suspension of the insured person's driver's licence as a result of a conviction for an offence related to the use or operation of an automobile, or

(iii) an accident or a conviction for an offence related to the use or operation of an automobile, if the insured person did not inform the insurer of the accident or conviction and the accident or conviction would likely have led to the insured person being charged a higher premium.

Schedule

8. (1) Sections 1, 2 and 3 of the Schedule are revoked and the following substituted (O. Reg. 464/96, s. 8(1)):

1. The filing fees paid by the insured person when applying for arbitration may be awarded to the insured person.

2. The filing fees paid by the insured person or the insurer when appealing the order of an arbitrator or applying to vary or revoke an order may be awarded.

3. (1) The legal fees payable by the insured person or the insurer for the following matters may be awarded:

1. For all services performed before an arbitration, appeal, variation or revocation hearing.

2. For the preparation for an arbitration, appeal, variation or revocation hearing.

3. For attendance at an arbitration, appeal, variation or revocation hearing.

4. For services subsequent to an arbitration, appeal, variation or revocation hearing.

(2) The number of hours for which legal fees may be awarded shall be determined by the arbitrator, having regard to the criteria set out in subsection 12(2) of this Regulation.

(3) The maximum amount that may be awarded for legal fees is the amount calculated using the hourly rates set out in the Dispute Resolution Practice Code published by the Ontario Insurance Commission, as it may be amended from time to time.

3.1 (1) The agent's fees payable by the insured person or the insurer for the following matters may be awarded:

1. **For the preparation for an arbitration, appeal, variation or revocati hearing.**

2. **For attendance at an arbitration, appeal, variation or revocation he ing.**

3. **For services subsequent to an arbitration, appeal, variation or re cation hearing.**

(2) The maximum amount that may be awarded for agent's fees is t amount calculated using the hourly rates set out in the Dispute Resolution Pr tice Code published by the Ontario Insurance Commission, as it may be amend from time to time.

(2) Section 4 of the Schedule is amended by inserting ''or the insurer'' af ''insured person'' in the second line (O. Reg. 464/96, s. 8(2)).

(3) Paragraphs 3 and 4 of section 4 of the Schedule are revoked and the follow substituted (O. Reg. 464/96, s. 8(3)):

3. **For the delivery, by mail or courier, of items relating to the arbitrati appeal, variation or revocation hearing.**

4. **For other out-of-pocket expenses incurred in furtherance of the ar tration, appeal, variation or revocation hearing.**

5. **Any applicable taxes paid in respect of the expenses referred to in t section.**

(4) Subsection 5(1) of the Schedule is amended by inserting ''or the insur after ''insured person'' in the second line (O. Reg. 464/96, s. 8(4)).

(5) Subsection 5(4) of the Schedule is revoked and the following substitu (O. Reg. 464/96, s. 8(5)):

(4) The amount of the expenses paid by or on behalf of the insured per or the insurer to an expert witness for preparation for a hearing at which witness testifies may be awarded, to a maximum of $500.

(5) The amount of the expenses paid by or on behalf of the insured per or the insurer to an expert for the preparation of a report may be awarded a maximum of $1,500.

(6) Subsection 6(1) of the Schedule is amended by striking out the port before paragraph 1 and substituting the following (O. Reg. 464/96, s. 8(6)):

(1) The amount of the following expenses paid by or on behalf of the insu person, the insured person's lawyer or agent, the insured person's attendan one is required, or the insured's lawyer or agent may be awarded:

. . . . .

REGULATION 676

UNINSURED AUTOMOBILE COVERAGE

Section 2(1)(f)

Clause 2(1)(f) is amended by striking out ''$100'' and substituting ''$300'' (O. Reg. 400/96, s. 1).

For the purposes of a motor vehicle liability policy that is in effect on the day this Regulation comes into force, the deductible referred to in clause 2(1)(f) of the Regulation shall be deemed to be $100, until the earlier of,

(a) the first expiry date under the motor vehicle liability policy;

(b) the date on which the motor vehicle liability policy is terminated by the insurer or the insured (O. Reg. 400/96 s. 2).

ONTARIO REGULATION 776/93

STATUTORY ACCIDENTS BENEFITS SCHEDULE — ACCIDENTS ON OR AFTER JANUARY 1, 1994

Title

The title to Ontario Regulation 776/93 is revoked and the following subst (O. Reg. 463/96, s. 1):

STATUTORY ACCIDENT BENEFITS SCHEDULE — ACCIDENTS AFTER DECEMBER 31, 1993 AND BEFORE NOVEMBER 1, 1996

Subsection 88(1)

Subsection 88(1) is revoked and the following substituted (O. Reg. 463/ 2):

(1) The benefits set out in this Regulation shall be provided under contract evidenced by a motor vehicle liability policy in respect of acci occurring after December 31, 1993 and before November 1, 1996.

Section 95

Section 95 is revoked and the following substituted (O. Reg. 463/96, s. 3)

95. This Regulation may be cited as the *Statutory Accident Benefits Sch — Accidents after December 1, 1993 and before November 1, 1996.*

ONTARIO REGULATION 401/96

ASSESSMENT OF HEALTH SYSTEM COSTS

1. (1) In this Regulation,

'assessment period'' means a period from April 1 of one year to March 31 of the next year with respect to which the Lieutenant Governor in Council makes an assessment under section 14.1 of the Act.

(2) For the purpose of this Regulation, an insurer's direct premiums for automobile insurance in a year are the premiums paid to the insurer in the year for automobile insurance, other than premiums paid to the insurer in the year under agreements for reinsurance.

2. The amount of $80,000,000, incurred by the Ministry of Health under cts and programs administered by that ministry, is prescribed for the purposes f section 14.1 of the Act.

3. An insurer's share of an assessment under section 14.1 of the Act in spect of an assessment period shall be determined in accordance with the llowing formula:

$$A = \frac{B \times C}{D}$$

here,

. = the insurer's share of the assessment,

= the amount prescribed under section 2 for the assessment period.

= the insurer's direct premiums for automobile insurance in Ontario in the year beginning on January 1 immediately preceding the beginning of the assessment period,

= the total, for all insurers that have issued motor vehicle liability policies in Ontario, of all direct premiums for automobile insurance in Ontario in the year beginning on January 1 immediately preceding the beginning of the assessment period.

4. For any assessment that becomes effective before March 31, 1997,

(a) the assessment period shall be the time from the date the assessment becomes effective to March 31, 1997, rather than as defined in subsection 1(1); and

(b) for the purpose of the calculation set out in section 3, the amount prescribed under section 2 shall be pro-rated.

ONTARIO REGULATION 403/96

Amended by O. Reg. 462/96

STATUTORY ACCIDENT BENEFITS SCHEDULE — ACCIDENTS ON OR AFTER NOVEMBER 1, 1996

PART I
GENERAL

TITLE

1. This Regulation may be cited as the *Statutory Accident Benefits Sch — Accidents on or after November 1, 1996.* O. Reg. 462/96, s. 2.

DEFINITIONS AND INTERPRETATION

2. (1) In this Regulation,

"accident" means an incident in which the use or operation of an autor directly causes an impairment or directly causes damage to any prescr eyewear, denture, hearing aid, prosthesis or other medical or dental d

"attendant care benefit" means the benefit provided by section 16;

"caregiver benefit" means the benefit provided by Part IV;

"case manager" means a person who provides services related to the c nation of goods or services for which payment is provided by a m rehabilitation or attendant care benefit;

"catastrophic impairment" means,

- **(a) paraplegia or quadriplegia,**
- **(b) amputation or other impairment causing the total and permane of use of both arms,**
- **(c) amputation or other impairment causing the total and permane of use of both an arm and a leg,**
- **(d) total loss of vision in both eyes,**
- **(e) brain impairment that, in respect of an accident, results in,**
  - **(i) a score of 9 or less on the Glasgow Coma Scale, as publis Jennett, B. and Teasdale, G., *Management of Head Injuries* temporary Neurology Series, Volume 20, F.A. Davis Con Philadelphia, 1981, according to a test administered wi**

reasonable period of time after the accident by a person trained for that purpose, or

(ii) a score of 2 (vegetative) or 3 (severe disability) on the Glasgow Outcome Scale, as published in Jennett, B. and Bond, M., *Assessment of Outcome After Severe Brain Damage*, Lancet i:480, 1975, according to a test administered more than six months after the accident by a person trained for that purpose,

(f) subject to subsections (2) and (3), any impairment or combination of impairments that, in accordance with the American Medical Association's *Guides to the Evaluation of Permanent Impairment*, 4th edition, 1993, results in 55 per cent or more impairment of the whole person, or

(g) subject to subsections (2) and (3), any impairment that, in accordance with the American Medical Association's *Guides to the Evaluation of Permanent Impairment*, 4th edition, 1993, results in a class 4 impairment (marked impairment) or class 5 impairment (extreme impairment (due to mental or behaviourial disorder;

chiropractor'' means a person authorized by law to practise chiropractic;

death benefit'' means the benefit provided by section 25;

dentist'' means a person authorized by law to practise dentistry;

designated assessment centre'' means an assessment centre designated under section 52;

funeral benefit'' means the benefit provided by section 26;

health practitioner'', in respect of a particular impairment, means a physician or,

(a) a chiropractor, if the impairment is one that a chiropractor is authorized by law to treat,

(b) a dentist, if the impairment is one that a dentist is authorized by law to treat,

(c) an optometrist, if the impairment is one that an optometrist is authorized by law to treat,

(d) a psychologist, if the impairment is one that a psychologist is authorized by law to treat, or

(e) a physiotherapist, if the impairment is one that a physiotherapist is authorized by law to treat;

mpairment'' means a loss or abnormality of a psychological, physiological or anatomical structure or function;

ncome replacement benefit'' means the benefit provided by Part II;

"insured automobile", in respect of a particular motor vehicle liability p means any automobile covered by the policy;

"insured person" in respect of a particular motor vehicle liability policy, m

(a) the named insured, any person specified in the policy as a driver insured automobile, the spouse of the named insured, and an pendant of the named insured or spouse, if the named insured, spe driver, spouse or dependant.

(i) is involved in an accident in or outside of Ontario that inv the insured automobile or another automobile, or

(ii) is not involved in an accident but suffers psychological or m injury as a result of an accident in or outside of Ontario results in a physical injury to his or her spouse, child, grand parent, grandparent, brother, sister, dependant or spouse pendant,

(b) in respect of accidents in Ontario, a person who is involved accident involving the insured automobile, and

(c) in respect of accidents outside Ontario, a person who is an occ of the insured automobile and who is a resident of Ontario or resident of Ontario at some point during the 60 days before the dent;

"medical benefit" means the benefit provided by section 14;

"member of a health profession" means a member of a College as defi the *Regulated Health Professions Act, 1991*;

"non-earner benefit" means the benefit provided by Part III;

"optometrist" means a person who is authorized by law to practise opton

"person in need of care" means, in respect of an insured person, another p who is less than 16 years of age or who requires care because of physi mental incapacity;

"personal and vocational characteristics" include,

(a) employment history,

(b) education and training,

(c) vocational aptitudes,

(d) vocational skills,

(e) physical abilities,

(f) cognitive abilities, and

(g) language abilities;

"physician" means a person authorized by law to practise medicine;

"psychologist" means a person authorized by law to practise psychology;

"physiotherapist" means a person authorized by law to practice physiotherapy;

"rehabilitation benefit" means the benefit provided by section 15;

"spouse" has the same meaning as in Part VI of the *Insurance Act*;

"treatment plan" means, in respect of an insured person who sustains an impairment as a result of an accident, a document prepared by a member of a health profession that includes,

(a) a description of the impairment,

(b) a description of any disability that results from the impairment and an estimate of the duration of the disability,

(c) a description of the goods and services that will be used in the treatment or rehabilitation of the insured person and a description of the benefits that are anticipated from the goods and services,

(d) a statement identifying the persons who will provide the goods and services,

(e) an estimate of the duration of the services,

(f) an estimate of the costs of the goods and services,

(g) a statement identifying a member of a health profession who will supervise the implementation of the treatment plan,

(h) a statement by a health practitioner indicating that he or she approves of the treatment plan and is of the opinion that the expenses contemplated by the treatment plan are reasonable and necessary for the insured person's treatment or rehabilitation, and

(i) the statement required by subsection 38(3).

(2) Clauses (f) and (g) of the definition of "catastrophic impairment" in ubsection (1) do not apply in respect of an insured person who sustains an mpairment as a result of an accident unless,

(a) the insured person's health practitioner states in writing that the insured person's condition has stabilized and it not likely to improve with treatment; or

(b) three years have elapsed since the accident.

(3) For the purpose of clauses (f) and (g) of the definition of "catastrophic npairment" in subsection (1), an impairment that is sustained by an insured erson but is not listed in the American Medical Association's *Guide to the valuation of Permanent Impairment*, 4th edition, 1993 shall be deemed to be the

impairment that is listed in that document and that is most analogous to impairment sustained by the insured person.

(4) For the purpose of this Regulation, a person suffers a complete inab to carry on a normal life as a result of an accident if, and only if, as a resu the accident, the person sustains an impairment that continuously prevent person from engaging in substantially all of the activities in which the pe ordinarily engaged before the accident.

(5) For the purpose of this Regulation, a person is employed if, for sa wages, other remuneration or profit, the person is engaged in employn including self-employment, or is the holder of an office, and "employment' a corresponding meaning.

(6) For the purpose of this Regulation, a person is a dependant of ano person if the person is principally dependent for financial support or care o other person or the other person's spouse.

(7) For the purpose of this Regulation, an aide or attendant for a pe includes a family member or a friend who acts as the person's aide or attenc even if the family member or friend does not possess any special qualificati

(8) For the purpose of this Regulation, payments of severance pay or mination pay are not payments for loss of income.

APPLICATION

3. (1) The benefits set out in this Regulation shall be provided under e contract evidenced by a motor vehicle liability policy in respect of accic occurring on or after November 1, 1996. O. Reg. 462/96, s. 3.

(2) The benefits set out in this Regulation shall be provided in respe accidents that occur in Canada or the United States of America, or on a v plying between ports of Canada or the United States of America.

(3) Benefits payable under this Regulation in respect of an insured pe shall be paid by the insurer that is liable to pay under subsection 268(2) o *Insurance Act.*

(4) Subject to Part IX, the insurer shall pay the benefits under this R lation despite section 225, subsection 233(1), section 240 and subsection 2 of the *Insurance Act.*

PART II
INCOME REPLACEMENT BENEFIT

ELIGIBILITY CRITERIA

4. The insurer shall pay an insured person who sustains an impairme a result of an accident an income replacement benefit if the insured person n any of the following qualifications:

1. **The insured person was employed at the time of the accident and, as a result of and within 104 weeks after the accident, suffers a substantial inability to perform the essential tasks of that employment.**

2. **The insured person,**

   i. **was not employed at the time of the accident.**

   ii. **was employed for at least 26 weeks during the 52 weeks before the accident or was receiving benefits under the *Employment Insurance Act* (Canada) at the time of the accident,**

   iii. **was 16 years of age or more or was excused from attendance at school under the *Education Act* at the time of the accident, and**

   iv. **as a result of and within 104 weeks after the accident, suffers a substantial inability to perform the essential tasks of the employment in which the insured person spent the most time during the 52 weeks before the accident.**

3. **The insured person,**

   i. **was entitled at the time of the accident to start work within one year under a legitimate contract of employment that was made before the accident and that is evidenced in writing, and**

   ii. **as a result of and within 104 weeks after the accident, suffers a substantial inability to perform the essential tasks of the employment he or she was entitled to start under the contract.**

PERIOD OF BENEFIT

5. (1) Subject to subsection (2), an income replacement benefit is payable during the period that the insured person suffers a substantial inability to perform the essential tasks of the employment in respect of which he or she qualifies for the benefit under section 4.

(2) The insurer is not required to pay an income replacement benefit,

(a) for the first week of the disability;

(b) for any period longer than 104 weeks of disability, unless, as a result of the accident, the insured person is suffering a complete inability to engage in any employment for which he or she is reasonably suited by education, training or experience; or

(c) in the case of an insured person who qualifies for the benefit under paragraph 3 of section 4, for the period before the day he or she would have been entitled under the contract to begin employment.

AMOUNT OF BENEFIT

6. (1) The amount of the income replacement benefit shall be,

(a) for each of the first 104 weeks of disability, 80 per cent of the insure person's net weekly income from employment determined in acco dance with section 61; and

(b) for each week after the first 104 weeks of disability, the greater of th amount specified in clause (a) and $185.

(2) The insurer may deduct from the amount of the income replacemer benefit payable to an insured person 80 per cent of the net income received b the insured person in respect of any employment subsequent to the accident.

(3) For the purpose of subsection (2), the net income received by an insure person in respect of employment subsequent to the accident shall be determine by subtracting the following amounts from the gross income received by th person in respect of the employment subsequent to the accident:

1. The premium payable by the person under the *Employment Insuran Act* (Canada) on the gross income.

2. The contribution payable by the person under the *Canada Pensic Plan* (Canada) on the gross income.

3. The income tax payable by the person under the *Income Tax A* (Canada) and the *Income Tax Act* (Ontario) on the gross income.

(4) For the purpose of subsection (2), net income from self-employment fc an insured person who was self-employed at the time of the accident shall b determined without making any deductions for,

(a) expenses that were not reasonable or necessary to prevent a loss revenue;

(b) salary expenses that were paid to replace the person's active partic pation in the business, except to the extent that those expenses we reasonable for that purpose; and

(c) non-salary expenses that were different in nature or greater than th non-salary expenses incurred before the accident, except to the exte that those expenses were necessary to prevent or reduce any loss resulting from the accident.

(5) If the insured person was self-employed at the time of the accident ar the person incurs losses from self-employment as a result of the accident, th insurer shall add to the amount of the income replacement benefit payable the person 80 per cent of the losses from self-employment incurred as a result the accident.

(6) For the purpose of subsection (5), losses from self-employment shall b determined in the same manner as losses from the business in which the perso was self-employed would be determined under subsection 9(2) of the *Income Ta Act* (Canada) and the *Income Tax Act* (Ontario), without making any deductio for,

(a) expenses that were not reasonable or necessary to prevent a loss of revenue;

(b) salary expenses that were paid to replace the person's active participation in the business, except to the extent that those expenses were reasonable for that purpose;

(c) non-salary expenses that were different in nature or greater than the non-salary expenses incurred before the accident, except to the extent that those expenses were necessary to prevent or reduce any losses resulting from the accident;

(d) expenses that are eligible for capital cost allowance or an allowance on eligible capital property; or

(e) losses deductible under section 111 of the *Income Tax Act* (Canada).

COLLATERAL PAYMENTS FOR LOSS OF INCOME AND MAXIMUM AMOUNT OF BENEFIT

7. (1) Despite subsection 6(1) but subject to subsections 6(2) to (6), the eekly amount of an income replacement benefit payable to a person shall be ıe lesser of the following amounts:

1. The amount determined under subsection 6(1), reduced by,

i. net weekly payments for loss of income that are being received by the person as a result of the accident under the laws of any jurisdiction or under any income continuation benefit plan, and

ii. net weekly payments for loss of income that are not being received by the person but are available to the person as a result of the accident under the laws of any jurisdiction or under any income continuation benefit plan, unless the person has applied to receive the payments for loss of income. O. Reg. 462/96, s. 4.

2. The greater of the following amounts:

i. $400.

ii. If the optional income replacement benefit referred to in section 27 has been purchased and is applicable to the person, the amount fixed by the optional benefit.

(2) For the purpose of paragraph 1 of subsection (1), the amount deter-ined under subsection 6(1) shall not be reduced by,

(a) benefits under the *Employment Insurance Act* (Canada) that are being received by or are available to the person;

(b) payments under a sick leave plan that are not being received by the person but are available to the person; or

(c) payments under a workers' compensation law or plan that are n being received by the person and to which the person is not entitl because the person has elected under the workers' compensation la or plan to bring an action.

(3) For the purpose of this section, net weekly payments for loss of incor shall be determined by subtracting from the gross weekly amount of paymer for loss of income the income tax payable by the person under the *Income T Act* (Canada) and the *Income Tax Act* (Ontario) on the gross weekly amount payments for loss of income.

(4) For the purpose of subsection (3), the person whose net weekly paymer for loss of income are to be determined shall be deemed to be a resident Ontario.

GROSS INCOME CALCULATIONS

8. (1) An insured person who is eligible for an income replacement bene under paragraph 1 of section 4 and who was not self-employed at any tir during the four weeks before the accident shall designate one of the followi time periods:

1. The four weeks before the accident.

2. The 52 weeks before the accident.

(2) An insured person who is eligible for an income replacement bene under paragraph 1 of section 4 and who was self-employed at any time duri the four weeks before the accident shall designate one of the following tir periods:

1. The 52 weeks before the accident.

2. The last fiscal year completed before the accident for the business which the person was self-employed, if the business completed a fisc year before the accident.

(3) For the purpose of determining the amount of an insured persor income replacement benefit, the gross annual income from employment for person who qualifies for a benefit under paragraph 1 of section 4 shall be deem to be the following amount:

1. In the case of a person who designated the four weeks before t accident under paragraph 1 of subsection (1), the person's gross i come from employment for the four weeks before the accident, mu tiplied by 13.

2. In the case of a person who designated the 52 weeks before the accide under paragraph 2 of subsection (1) or paragraph 1 of subsection (2 the person's gross income from employment for the 52 weeks befo the accident.

3. In the case of a person who designated the last fiscal year completed before the accident under paragraph 2 of subsection (2), the person's gross income from employment for that fiscal year. O. Reg. 462/96, s. 5.

(4) For the purpose of determining the amount of an insured person's ıcome replacement benefit, the gross annual income from employment for a erson who qualifies for a benefit under paragraph 2 of section 4 shall be deemed) be the person's gross income from employment for the 52 weeks before the ccident.

(5) For the purpose of determining the amount of an insured person's ıcome replacement benefit, the gross annual income from employment for a erson who qualifies for a benefit under paragraph 3 of section 4 shall be deemed) be the gross income payable under the contract of employment, extrapolated) reflect an annual income.

(6) A determination of gross income under subsection (3) or (4) shall include ıy benefits received under the *Employment Insurance Act* (Canada) or a pred- :essor of that Act in respect of the relevant period.

(7) If a person qualifies for an income replacement benefit under paragraph or 2 of section 4 and also qualifies under paragraph 3 of section 4, the person's ·oss annual income from employment shall be determined under subsection (3) · (4), as the case may be, until the day he or she would have been entitled to :gin employment under the contract described in paragraph 3 of section 4, and ereafter the person's gross annual income from employment shall be deter- ined in accordance with subsection (5).

ADJUSTMENT AFTER AGE 65

9. (1) Despite sections 6 and 7, if a person is receiving an income replace- ent benefit immediately before attaining 65 years of age, the weekly amount the benefit shall be adjusted, on the later of the date the person attains 65 ars of age and the second anniversary of the date the person began receiving e benefit, to the amount determined in accordance with the following formula:

$$A = B \times 0.02 \times C$$

ıere,

= the amount to which the weekly amount of the income replacement benefit shall be adjusted.

= the weekly amount of the income replacement benefit that the person was entitled to receive immediately before the adjustment, including any additions required by subsection 6(5) but without making any deductions permitted by subsection 6(2),

= the lesser of,

i. 35, and

ii. the number of years during which the person qualified for i income replacement benefit before the adjustment is made.

(2) An income replacement benefit that has been adjusted under subsecti (1) is payable until the person dies.

(3) Section 5 and subsections 6(2) to (6) do not apply to an income repla ment benefit that has been adjusted under subsection (1).

ENTITLEMENT ARISING AFTER AGE 65

10. (1) Despite sections 6 and 7, if a person becomes entitled to receive income replacement benefit after attaining 65 years of age, the weekly amou of the benefit shall be the amount determined under section 7 multiplied by t factor set out in Column 2 of the Table to this subsection opposite the numb of weeks that have elapsed since the person became entitled to receive the benef

TABLE

Column 1	Column 2
Number of weeks since Entitlement Arose	Factor
Less than 52 weeks	1.0
52 weeks or more but less than 104 weeks	0.8
104 weeks or more but less than 156 weeks	0.6
156 weeks or more but less than 208 weeks	0.3
208 weeks or more	0.0

(2) An income replacement benefit is no longer payable to a person to whoi subsection (1) applies if more than 208 weeks have elapsed since the perso became entitled to the benefit.

(3) Subsections 6(2) to (6) do not apply to the income replacement benef paid to a person to whom subsection (1) applies.

TEMPORARY RETURN TO EMPLOYMENT

11. (1) A person receiving an income replacement benefit may return t or start an employment at any time during the 104 weeks following the onset o the disability in respect of which the benefit is paid without affecting his or he entitlement to resume receiving benefits under this Part if, as a result of th accident, he or she is unable to continue in the employment.

PART III
NON-EARNER BENEFIT

12. (1) The insurer shall pay an insured person who sustains an impairment a result of an accident a non-earner benefit if the insured person meets any the following qualifications:

1. The insured person suffers a complete inability to carry on a normal life as a result of and within 104 weeks after the accident and does not qualify for an income replacement benefit.

2. The insured person suffers a complete inability to carry on a normal life as a result of and within 104 weeks after the accident, received a caregiver benefit as a result of the accident and there is no longer a person in need of care.

3. The insured person suffers a complete inability to carry on a normal life as a result of and within 104 weeks after the accident and,

   i. was enroled on a full-time basis in elementary, secondary or post-secondary education at the time of the accident, or

   ii. completed his or her education less than one year before the accident and was not employed, after completing his or her education and before the accident, in an employment that reflected his or her education and training.

(2) Subject to subsection (3), the amount of the non-earner benefit shall be $15 for each week that the insured person is eligible to receive the benefit.

(3) If a person qualifies for a non-earner benefit under paragraph 3 of subsection (1) and more than 104 weeks have elapsed since the onset of the ability, the amount of the non-earner benefit shall be $320 for each week that insured person continues to be eligible to receive the benefit.

(4) The insurer may deduct the following amounts from the amount payable n insured person as a non-earner benefit:

1. Net weekly payments for loss of income that are being received by the insured person as a result of the accident under the laws of any jurisdiction or under any income continuation benefit plan.

2. Net weekly payments for loss of income that are not being received by the insured person but are available to the insured person as a result of the accident under the laws of any jurisdiction or under any income continuation benefit plan, unless the insured person has applied to receive the payments for loss of income. O. Reg. 462/96, s. 6.

(5) For the purpose of subsection (4), subsections 7(2) and (3) apply with essary modifications.

(6) Subject to subsection (7), the non-earner benefit is payable during th period that the insured person suffers a complete inability to carry on a norma life.

(7) The insurer,

(a) is not required to pay a non-earner benefit for the first 26 weeks afte the onset of the complete inability to carry on a normal life; and

(b) is not required to pay a non-earner benefit for any period before th insured person attains 16 years of age.

(8) Sections 9 and 10 apply, with necessary modifications, to a non-earne benefit and, for that purpose, the reference in subsection 10(1) to "the amoun determined under section 7" shall be deemed to be a reference to the amoun referred to in subsection (2) of this section.

PART IV
CAREGIVER BENEFIT

13. (1) The insurer shall pay an insured person who sustains an impairmer as a result of an accident a caregiver benefit if the insured person meets all o the following qualifications:

1. At the time of the accident,

   i. the insured person was residing with a person in need of car and

   ii. the insured person was the primary caregiver for the person i need of care and did not receive any remuneration for engagin in caregiving activities.

2. As a result of and within 104 weeks after the accident, the insure person suffers a substantial inability to engage in the caregiving acti ities in which he or she engaged at the time of the accident.

(2) The caregiver benefit shall pay for reasonable and necessary expens incurred as a result of the accident in caring for a person in need of care,

(3) The amount of the caregiver benefit shall not exceed.

(a) for the first person in need of care,

   (i) $250 per week, or

   (ii) if the optional caregiver and dependant care benefit referred in section 27 has been purchased and is applicable to the insure person, the amount fixed by the optional benefit; and

(b) for each additional person in need of care,

   (i) $50 per week, or

(ii) if the original caregiver and dependant care benefit referred to in section 27 has been purchased and is applicable to the insured person, the amount fixed by the optional benefit.

(4) The insurer is not required to pay a caregiver benefit for any period ger than 104 weeks of disability, unless, as a result of the accident, the insured son is suffering a complete inability to carry on a normal life.

PART V
MEDICAL, REHABILITATION AND ATTENDANT CARE BENEFITS

MEDICAL BENEFIT

14. (1) The insurer shall pay an insured person who sustains an impairment result of an accident a medical benefit.

(2) The medical benefit shall pay for all reasonable and necessary expenses rred by or on behalf of the insured person as a result of the accident for,

(a) medical, surgical, dental, optometric, hospital, nursing, ambulance, audiometric and speech-language pathology services;

(b) chiropractic, psychological, occupational therapy and physiotherapy services;

(c) medication;

(d) prescription eyewear;

(e) dentures and other dental devices;

(f) hearing aids, wheelchairs or other mobility devices, prostheses, orthotics and other assistive devices;

(g) transportation for the insured person to and from treatment sessions, including transportation for an aide or attendant;

(h) other goods and services of a medical nature that the insured person requires.

(3) The insurer is not liable to pay a medical benefit for goods or services are experimental in nature.

(4) The insurer is not liable to pay a medical benefit under clause (2)(a), or (h) for expenses related to professional services rendered to an insured on that exceed the maximum rate or amount of expenses established under *Professional Fees Guidelines* published in *The Ontario Gazette* by the Ontario rance Commission, as they may be amended from time to time.

(5) Subject to subsection (6), the insurer is not liable to pay a medical benefit er clause (2)(g) for expenses related to transportation unless the expenses authorized by, and are calculated by applying the rates set out in, the

Transportation Expense Guidelines published in *The Ontario Gazette* by th tario Insurance Commission, as they may be amended from time to time.

(6) The insurer is not liable to pay a medical benefit under clause (2)(g expenses related to the first 50 kilometres of transportation in the insured son's automobile to and from a treatment session.

REHABILITATION BENEFIT

15. (1) The insurer shall pay an insured person who sustains an impairi as a result of an accident a rehabilitation benefit.

(2) The rehabilitation benefit shall pay for reasonable and necessary m ures undertaken by an insured person to reduce or eliminate the effects of disability resulting from the impairment or to facilitate the insured pers reintegration into his or her family, the rest of society and the labour mark

(3) Measures to reintegrate an insured person into the labour marke clude measures that are reasonable and necessary to enable the person to,

(a) engage in employment that is as similar as possible to employme which he or she engaged before the accident; or

(b) lead as normal a work life as possible.

(4) In determining whether a measure is reasonable and necessary for purpose of subsection (3), the insurer shall consider the insured person's pers and vocational characteristics.

(5) The rehabilitation benefit shall pay for all reasonable and necess expenses incurred by or on behalf of the insured person as a result of the accid for a purpose referred to in subsection (2) for,

(a) life skills training;

(b) family counselling;

(c) social rehabilitation counselling;

(d) financial counselling;

(e) employment counselling;

(f) vocational assessments;

(g) vocational or academic training;

(h) workplace modifications and workplace devices, including commu cations aids, to accommodate the needs of the insured person;

(i) home modifications and home devices, including communication ai to accommodate the needs of the insured person, or the purchase o new home if it is more reasonable to purchase a new home to acco

modate the needs of the insured person than to renovate the insured person's existing home;

(j) vehicle modifications to accommodate the needs of the insured person, or the purchase of a new vehicle if it is more reasonable to purchase a new vehicle to accommodate the needs of the insured person than to modify an existing vehicle;

(k) transportation for the insured person to and from counselling sessions, training sessions and assessments, including transportation for an aide or attendant;

(l) other goods and services that the insured person requires, except services provided by a case manager.

(6) The insurer is not liable to pay a rehabilitation benefit under any of lauses (5)(a) to (g) or clause (5)(l) for expenses related to professional services endered to an insured person that exceed the maximum rate or amount of xpenses established under the *Professional Fees Guidelines* published in *The ntario Gazette* by the Ontario Insurance Commission, as they may be amended om time to time.

(7) For the purpose of clause (5)(i), expenses incurred to renovate the inred person's home shall be deemed not to be reasonable and necessary expenses the renovations are only for the purpose of giving the insured person access areas of the home that are not needed for ordinary living.

(8) The amount of the rehabilitation benefit for the purchase of a new home all not exceed the value of the renovations to the insured person's existing me that would have been required to accommodate the needs of the insured rson.

(9) For the purpose of clause (5)(j), expenses incurred to purchase or modify ehicle to accommodate the needs of an insured person shall be deemed not to reasonable and necessary expenses if they are incurred within five years after last expenses incurred for that purpose in respect of the same accident.

(10) The amount of the rehabilitation benefit for the purpose of a new nicle shall not exceed the cost of the new vehicle, less the trade-in value of the sting vehicle.

(11) Subject to subsection (12), the insurer is not liable to pay a rehabilion benefit under clause (5)(k) for expenses related to transportation unless expenses are authorized by, and are calculated by applying the rates set out the *Transportation Expense Guidelines* published in *The Ontario Gazette* by Ontario Insurance Commission, as they may be amended from time to time.

(12) The insurer is not liable to pay a rehabilitation benefit under clause k) for expenses related to the first 50 kilometres of transportation in the ured person's automobile to and from a counselling session, training session ssessment.

ATTENDANT CARE OR BENEFIT

16. (1) The insurer shall pay an insured person who sustains an impairm as a result of an accident an attendant care benefit.

(2) The attendant care benefit shall pay for all reasonable and necess expenses incurred by or on behalf of the insured person as a result of the accid for,

(a) services provided by an aide or attendant; or

(b) services provided by a long-term care facility, including a nurs home, home for the aged or chronic care hospital.

(3) Subsection (2) does not apply to expenses for which payment may obtained under clause 14(2)(g), 15(5)(k) or 24(1)(c).

(4) The monthly amount payable by the attendant care benefit shall determined in accordance with Form 1.

(5) The amount of the attendant care benefit payable in respect of insured person shall not exceed,

(a) $3,000 per month, in the case of an insured person who did not sust a catastrophic impairment as a result of the accident; or

(b) $6,000 per month, in the case of an insured person who sustaine catastrophic impairment as a result of the accident.

CASE MANAGER SERVICES

17. (1) If an insured person sustains a catastrophic impairment as a re of an accident, the insurer shall pay for all reasonable and necessary expen incurred by or on behalf of the insured person as a result of the accident services provided, in accordance with a treatment plan, by a qualified c manager.

(2) The insurer is not liable under subsection (1) to pay for expenses rela to professional services rendered to an insured person that exceed the maxim rate or amount of expenses established under the *Professional Fees Guideli* published in *The Ontario Gazette* by the Ontario Insurance Commission, as t may be amended from time to time.

DURATION OF MEDICAL REHABILITATION AND ATTENDANT CARE BENEFITS

18. (1) No medical or rehabilitation benefit is payable for expenses curred,

(a) more than 10 years after the accident, in the case of an insured per who was 15 years of age or more at the time of the accident; or

(b) after the insured person attains 25 years of age, in the case of an insured person who was less than 15 years of age at the time of the accident.

(2) No attendant care benefit is payable for expenses incurred more than 4 weeks after the accident.

(3) Subsections (1) and (2) do not apply in respect of an insured person who stains a catastrophic impairment as a result of the accident.

(4) Subsections (1) and (2) do not apply if the optional medical, rehabilitation and attendant care benefit referred to in section 27 has been purchased d is applicable to the insured person.

MAXIMUM LIMITS ON MEDICAL, REHABILITATION AND ATTENDANT CARE BENEFITS

19. (1) The sum of the medical and rehabilitation benefits paid in respect an insured person shall not exceed, for any one accident,

(a) $100,000; or

(b) if the insured person sustained a catastrophic impairment as a result of the accident, $1,000,000.

(2) The amount of the attendant care benefit paid in respect of an insured rson shall not exceed, for any one accident,

(a) $72,000; or

(b) if the insured person sustained a catastrophic impairment as a result of the accident, $1,000,000.

(3) If the optional medical, rehabilitation and attendant care benefit red to in section 27 has been purchased and is applicable to the insured person, maximum limits fixed by the optional benefit apply and subsections (1) and do not apply.

(4) For the purpose of subsection (1), the medical and rehabilitation benefits d in respect of an insured person include any amount paid in respect of the ured person under section 17.

PART VI
PAYMENT OF OTHER EXPENSES

LOST EDUCATIONAL EXPENSES

20. (1) The insurer shall pay for lost educational expenses incurred by or behalf of an insured person who sustains an impairment as a result of an ident if,

(a) at the time of the accident, the insured person was enrolled in a pro-

gram of elementary, secondary, post-secondary or continuing educ tion; and

(b) as a result of the accident, the insured person is unable to continue t program.

(2) The amount payable under this section shall not exceed $15,000.

(3) In this section,

"lost educational expenses" means expenses incurred before the accident f tuition, books, equipment or room and board in respect of the progra term or program year in which the insured person was enrolled at the tir of the accident, if the expenses are related to the program that the insur person is unable to continue.

EXPENSES OF VISITORS

21. (1) If an insured person sustains an impairment as a result of an acc dent, the insurer shall pay for reasonable and necessary expenses incurred b the following persons as a result of the accident in visiting the insured pers during his or her treatment or recovery:

1. The spouse, children, grandchildren, parents, grandparents, brothe and sisters of the insured person.

2. An individual who was living with the insured person at the time the accident.

3. An individual who has demonstrated a settled intention to treat th insured person as a child of the individual's family.

4. An individual whom the insured person has demonstrated a settle intention to treat as a child of the insured person's family.

(2) No payment is required under this section for expenses incurred mor than 104 weeks after the accident.

(3) Subsection (2) does not apply if the insured person sustained a cat strophic impairment as a result of the accident.

HOUSEKEEPING AND HOME MAINTENANCE

22. (1) The insurer shall pay for reasonable and necessary additional ex penses incurred by or on behalf of an insured person as a result of an accider for housekeeping and home maintenance services if, as a result of the acciden the insured person sustains an impairment that results in a substantial inabilit to perform the housekeeping and home maintenance services that he or sh normally performed before the accident.

(2) The amount payable under this section shall not exceed $100 per week

(3) No payment is required under this section for expenses incurred more an 104 weeks after the onset of the disability.

(4) Subsection (3) does not apply if the insured person sustained a cata- ophic impairment as a result of the accident.

DAMAGE TO CLOTHING, GLASSES, HEARING AIDS, ETC.

23. The insurer shall pay for all reasonable expenses incurred by or on half of an insured person in repairing or replacing,

(a) clothing worn by the insured person at the time of an accident that was lost or damaged as a result of the accident; or

(b) prescription eyewear, dentures, hearing aids, prostheses and other medical or dental devices that were lost or damaged as a result of an accident.

COST OF EXAMINATIONS

24. (1) The insurer shall pay for all reasonable expenses incurred by or on nalf of an insured person for the purpose of this Regulation in obtaining and ending an examination or assessment or in obtaining a certificate, report or atment plan, including,

(a) fees charged by a person who conducts an examination or assessment or provides a certificate, report or treatment plan;

(b) fees charged by a designated assessment centre; and

(c) transportation expenses incurred in transporting the insured person to and from an examination or assessment, including transportation expenses for an aide or attendant.

(2) The insurer is not liable under clause (1)(a) or (b) to pay for expenses ated to professional services rendered to an insured person that exceed the ximum rate or amount of expenses established under the *Professional Fees delines* published in *The Ontario Gazette* by the Ontario Insurance Commis- , as they may be amended from time to time.

(3) Subject to subsection (4), the insurer is not liable under clause (1)(c) to for expenses related to transportation unless the expenses are authorized and are calculated by applying the rates set out in, the *Transportation Expense delines* published in *The Ontario Gazette* by the Ontario Insurance Commis- , as they may be amended from time to time.

(4) The insurer is not liable under clause (1)(c) to pay for expenses related he first 50 kilometres of transportation in the insured person's automobile nd from an examination or assessment.

PART VII
DEATH AND FUNERAL BENEFITS

DEATH BENEFIT

25. (1) The insurer shall pay a death benefit in respect of an insured pers if he or she dies as a result of an accident,

(a) within 180 days after the accident; or

(b) within 156 weeks after the accident, if during that period the insur person was continually disabled as a result of the accident.

(2) The death benefit shall provide for the following payments:

1. A payment to the insured person's spouse of,

i. $25,000, or

ii. if the optional death and funeral benefit referred to in section 2 has been purchased and is applicable to the insured person, th amount fixed by the optional benefit.

2. A payment to each of the insured person's dependants, and to eac person to whom the insured person had an obligation at the time o the accident to provide support under a domestic contract or cou order, of,

i. $10,000, or

ii. if the optional death and funeral benefit referred to in section 2 has been purchased and is applicable to the insured person, th amount fixed by the optional benefit.

3. If no payment is required by paragraph 1, an additional payment o $25,000 to the insured person's dependants and the persons, othe than a former spouse of the insured person, to whom the insured perso had an obligation at the time of the accident to provide support unde a domestic contract or court order, to be divided equally among th persons entitled.

4. A payment of $10,000 to each former spouse of the insured person t whom the insured person was obligated at the time of the accident t provide support under a domestic contract or court order.

5. A payment of $10,000 to,

i. a person in respect of whom the insured person was a dependan at the time of the accident,

ii. the spouse of a person in respect of whom the insured person wa a dependant at the time of the accident, if the spouse was the insured person's primary caregiver at the time of the accident

and the person in respect of whom the insured person was a dependant at the time of the accident dies before the insured person or within 30 days after the insured person, or

ii. the dependants of a person in respect of whom the insured person was a dependant at the time of the accident, if no payment is required by subparagraph i or ii, to be divided equally among the persons entitled.

(3) No payment shall be made under this section to a person who dies before e insured person or within 30 days after the insured person.

(4) If at the time of the accident the insured person had more than one ouse who is entitled to a payment under this section, the payment shall be ivided equally among them.

(5) If requested by the insurer, a person who conducts an autopsy of the iured person shall provide a copy of his or her report to the insurer.

(6) In this section,

pouse" means a person who was a spouse at the time of the accident.

FUNERAL BENEFIT

26. (1) The insurer shall pay a funeral benefit in respect of an insured rson who dies as a result of an accident.

(2) The funeral benefit shall pay for funeral expenses incurred in an amount t exceeding,

(a) $6,000; or

(b) if the optional death and funeral benefit referred to in section 27 has been purchased and is applicable to the insured person, the amount fixed by the optional benefit.

PART VIII
OPTIONAL BENEFITS

DESCRIPTION OF OPTIONAL BENEFITS

27. (1) Every insurer shall offer the following optional benefits:

1. **An optional income replacement benefit that fixes the amount referred to in subparagraph ii of paragraph 2 of subsection 7(1) at $600, $800 or $1000, as selected by the named insured under the policy, for the purpose of determining the weekly amount of an income replacement benefit.**

2. **An optional caregiver and dependant care benefit that,**

i. fixes the maximum payment for expenses incurred in caring a person in need of care at $325 per week for the first perso need of care and $75 per week for each additional person in n of care, instead of the amounts specified in subclauses 13(3)(a and 13(3)(b)(i), and

ii. provides for the dependant care benefit described in section 2

3. An optional medical, rehabilitation and attendant care benefit t provides for the following maximum limits on medical, rehabilitat and attendant care benefits, instead of the limits specified in subs tions 19(1) and (2), and that provides for no limitation on the per of time for which expenses shall be paid for medical, rehabilitat and attendant care benefits:

i. The sum of the medical and rehabilitation benefits paid in resp of an insured person shall not exceed, for any one accident,

A. $1,100,000, or

B. $2,000,000, if the insured person sustained a catastrop impairment as a result of the accident.

ii. The amount of the attendant care benefit paid in respect of insured person shall not exceed, for any one accident,

A. $1,072,000, or

B. $2,000,000, if the insured person sustained a catastrop impairment as a result of the accident.

iii. Despite the limits established by subparagraphs i and ii, the ov all total of the medical, rehabilitation and attendant care bene paid in respect of an insured person for any one accident sl not exceed,

A. $1,172,000, or

B. $3,000,000, if the insured person sustained a catastrop impairment as a result of the accident.

4. An optional death and funeral benefit that,

i. fixes the amount payable to a deceased person's spouse at $50,0 instead of the amount specified in subparagraph i of paragr 1 of subsection 25(2).

ii. fixes the amount payable to each of a deceased's person's dep dants and to each person to whom the deceased person had obligation at the time of the accident to provide support und domestic contract or court order at $20,000, instead of the amo specified in subparagraph i of paragraph 2 of subsection 25 and

iii. fixes the maximum payment for funeral expenses at $8,000, instead of the amount specified in clause 26(2)(a).

5. An optional indexation benefit, as described in section 29.

(2) The optional benefits referred to in subsection (1) are applicable only

(a) the named insured;

(b) the spouse of the named insured;

(c) the dependants of the named insured and the dependants of the named insured's spouse; and

(d) the persons specified in the policy as drivers of the insured automobile.

(3) An optional benefit may be purchased at any time before an accident respect of which a claim is made.

(4) For the purpose of paragraph 3 of subsection (1), the medical and habilitation benefits paid in respect of an insured person include any amount id in respect of the insured person under section 17.

DEPENDANT CARE BENEFIT

28. (1) The dependant care benefit shall pay for reasonable and necessary ditional expenses incurred by or on behalf of an insured person as a result of accident in caring for the insured person's dependants, if the insured person eets the following qualifications:

1. The insured person sustained an impairment as a result of the accident.

2. The insured person was employed at the time of the accident.

3. The insured person is not receiving a caregiver benefit.

No payment is required under this section in respect of an expense incurred er the insured person dies.

(3) The amount payable under this section shall not exceed $75 per week the first dependant and $25 per week for each additional dependant.

(4) The total amount payable under this section shall not exceed $150 per ek.

OPTIONAL INDEXATION BENEFIT

29. (1) The optional indexation benefit shall provide that the following ounts shall be subject to annual indexation in accordance with subsections and (3):

1. The weekly amount of any income replacement or non-earner benefit

payable under this Regulation, without regard to any reductions m under subparagraphs i and ii of paragraph 1 of subsection 7(1).

2. The following amounts:

   i. The amounts specified in subparagraphs i and ii of paragra of subsection 7(1).

   ii. The amounts specified in subsections 12(2) and (3).

   iii. The amounts specified in subclauses 13(3)(a)(i) and (ii) 13(3)(b)(i) and (ii).

   iv. The amounts specified in clauses 16(5)(a) and (b).

3. If the optional medical, rehabilitation and attendant care benefi ferred to in section 27 was purchased and is applicable to the ins person, the following amounts:

   i. The outstanding balance with respect to medical and rehabi tion benefits, as calculated under subsection (4).

   ii. The outstanding balance with respect to attendant care ben as calculated under subsection (6).

   iii. The outstanding balance with respect to medical, rehabilit and attendant care benefits, as calculated under subsection

4. If paragraph 3 does not apply, the following amounts:

   i. The outstanding balance with respect to medical and rehab tion benefits, as calculated under subsection (10).

   ii. The outstanding balance with respect to attendant care ben as calculated under subsection (12). O. Reg. 462/96, s. 7(1).

(2) The indexation shall be performed on January 1 of every year follo an accident to which the optional indexation benefit applies by adjustin amount to be indexed by the percentage change in the Consumer Price I for Canada (All Items), as published by Statistics Canada under the auth of the *Statistics Act* (Canada), for the period from September in the year in diately preceding the previous year to September of the previous year.

(3) Subsection (2) is subject to the *Optional Indexation Benefit Guide* published in *The Ontario Gazette* by the Ontario Insurance Commission, as may be amended from time to time, except that those guidelines shall not pr for an adjustment of the amount to be indexed by a percentage greater tha percentage change in the applicable Consumer Price Index.

(4) For the purpose of subparagraph i of paragraph 3 of subsection (1 outstanding balance with respect to medical and rehabilitation benefits i culated by subtracting the total of medical and rehabilitation benefits pa

the insurer in the year preceding January 1 of the year to which the optional indexation benefit applies from the indexation balance calculated under subsection (5).

(5) The indexation balance for the purpose of subsection (4) is,

(a) in the first year the optional indexation benefit applies, the amount specified in sub-subparagraph A or B, as the case may be, of subparagraph i of paragraph 3 of subsection 27(1);

(b) in each subsequent year, the outstanding balance for the previous year, as calculated under subsection (4) and indexed under subsection (2).

(6) For the purpose of subparagraph ii of paragraph 3 of subsection (1), the outstanding balance with respect to attendant care benefits is calculated by subtracting the total of attendant care benefits paid by the insurer in the year preceding January 1 of the year to which the optional indexation benefit applies from the indexation balance calculated under subsection (7).

(7) The indexation balance for the purpose of subsection (6) is,

(a) in the first year the optional indexation benefit applies, the amount specified in sub-subparagraph A or B, as the case may be, of subparagraph ii of paragraph 3 of subsection 27(1);

(b) in each subsequent year, the outstanding balance for the previous year, as calculated under subsection (6) and indexed under subsection (2).

(8) For the purpose of subparagraph iii of paragraph 3 of subsection (1), the outstanding balance with respect to medical, rehabilitation and attendant care benefits is calculated by subtracting the total of medical, rehabilitation and attendant care benefits paid by the insurer in the year preceding January 1 of the year to which the optional indexation benefit applies from the indexation balance calculated under subsection (9).

(9) The indexation balance for the purpose of subsection (8) is,

(a) in the first year the optional indexation benefit applies, the amount specified in sub-subparagraph A or B, as the case may be, of subparagraph iii of paragraph 3 of subsection 27(1);

(b) in each subsequent year, the outstanding balance for the previous year, as calculated under subsection (8) and indexed under subsection (2).

(10) For the purpose of subparagraph i of paragraph 4 of subsection (1), the outstanding balance with respect to medical and rehabilitation benefits is calculated by subtracting the total of medical and rehabilitation benefits paid by the insurer in the year preceding January 1 of the year to which the optional indexation benefit applies from the indexation balance calculated under subsection (11). O. Reg. 462/96, s. 7(2).

(11) The indexation balance for the purpose of subsection (10) is,

(a) in the first year the optional indexation benefit applies, the amo specified in clause 19(1)(a) or (b), as the case may be;

(b) in each subsequent year, the outstanding balance for the previous y as calculated under subsection (10) and indexed under subsection

(12) For the purpose of subparagraph ii of paragraph 4 of subsection the outstanding balance with respect to attendant care benefits is calculate subtracting the total of attendant care benefits paid by the insurer in the y preceding January 1 of the year to which the optional indexation benefit app from the indexation balance calculated under subsection (13). O. Reg. 462/9 7(3).

(13) The indexation balance for the purpose of subsection (12) is,

(a) in the first year the optional indexation benefit applies, the amo specified in clause 19(2)(a) or (b), as the case may be;

(b) in each subsequent year, the outstanding balance for the previous y as calculated under subsection (12) and indexed under subsection

PART IX
GENERAL EXCLUSIONS

30. (1) The insurer is not required to pay an income replacement ben a non-earner benefit or a benefit under section 20, 21 or 22 in respect of a per who was the driver of an automobile at the time of the accident,

(a) if the driver knew or ought reasonably to have known that he or was operating the automobile while it was not insured under a mo vehicle liability policy;

(b) if the driver was driving the automobile without a valid driver' cence;

(c) if the driver is an excluded driver under the contract of automo insurance; or

(d) if the driver knew or ought reasonably to have known that he or was operating the automobile without the owner's consent.

(2) The insurer is not required to pay an income replacement benefi non-earner benefit or a benefit under section 20, 21 or 22,

(a) in respect of any person who has made, or who knows of, a mate misrepresentation that induced the insurer to enter into the cont of automobile insurance or who intentionally failed to notify the surer of a change in the risk material to the contract; or

(b) in respect of an occupant of an automobile at the time of the accid who knew or ought reasonably to have known that the driver operating the automobile without the owner's consent.

(3) Clause (2)(b) does not prevent an excluded driver or any other occupant of an automobile driven by the excluded driver from recovering accident benefits under a motor vehicle liability policy in respect of which the excluded driver or other occupant is a named insured.

(4) If a person sustains an impairment as a result of an accident and,

(a) at the time of the accident, the person was engaged in, or was an occupant of an automobile that was being used in connection with, an act for which the person is charged with a criminal offence; or

(b) the person is charged under section 254 of the *Criminal Code* (Canada) with failing to comply with a lawful demand to provide a breath sample in connection with the accident,

the insurer shall hold in trust any amounts payable under an income replacement benefit, a non-earner benefit or a benefit under section 20, 21 or 22 until the charge is finally disposed of, at which time the amounts and any income on the amounts,

(c) shall be returned to the insurer, if the person is found guilty of the offence or an included offence; or

(d) shall be paid to the person entitled to the payment, if the person is not found guilty of the offence or an included offence.

(5) In clause (4)(a),

"criminal offence" means,

(a) operating an automobile while the ability to operate the automobile is impaired by alcohol or a drug,

(b) operating an automobile while the concentration of alcohol in the operator's blood exceeds the limit permitted by law,

(c) failing to comply with a lawful demand to provide a breath sample, or

(d) any other criminal offence, whether or not the offence is related to the operation of an automobile.

PART X
PROCEDURES FOR CLAIMING BENEFITS

31. (1) A person's failure to comply with a time limit set out in this Part does not disentitle the person to a benefit if the person has a reasonable explanation.

(2) The insurer shall promptly provide the person with,

(a) the appropriate application forms;

(b) a written explanation of the benefits available under this Regulation;

(c) information to assist the person in applying for benefits; and

(d) information on any possible elections relating to income replacem non-earner and caregiver benefits.

(3) The person shall submit an application for the benefit to the insu within 30 days after receiving the application forms.

(4) If a person is required by an insurer to submit an additional applicat in respect of a benefit that the person is receiving or may be eligible to rece the person shall submit the additional application to the insurer within 30 d after receiving the additional application forms from the insurer.

DUTY OF APPLICANT TO PROVIDE INFORMATION

33. (1) A person applying for a benefit under this Regulation shall, wit 14 days after receiving a request from the insurer, provide the insurer with following:

1. Any information reasonably required to assist the insurer in de mining the person's entitlement to a benefit.

2. A statutory declaration as to the circumstances that gave rise to application for a benefit.

3. The number, street and municipality where the person ordinarily sides.

4. Proof of the person's identity.

(2) The benefit is not payable for any period before the person comp with subsection (1).

DISABILITY CERTIFICATE

34. (1) An insurer may require a person who claims an income repla ment, non-earner or caregiver benefit, or a benefit under section 20 or 22. furnish a certificate from a health practitioner of the person's choice as ofte is reasonably necessary.

(2) The certificate shall state the cause and nature of the impairment a an estimate of the duration of the disability in respect of which the benefi claimed.

(3) If an insurer requires a certificate, the person shall furnish the certific within 21 days after receiving the insurer's request.

(4) If the person fails to comply with subsection (3), no benefit is paya for the period more than 21 days after the person received the insurer's requ and before the person furnishes the certificate.

PAYMENT OF INCOME REPLACEMENT, NON-EARNER OR CAREGIVER BENEFIT

35. (1) On receiving an application for an income replacement, non-earner r caregiver benefit, an insurer shall promptly determine whether a benefit is ayable.

(2) If the insurer determines that a benefit is payable, the insurer shall pay ie benefit to the person within 14 days after receiving the application.

(3) Despite subsection (2), if the person failed, without a reasonable expla- ation, to notify the insurer within 30 days after the circumstances arose that ave rise to the entitlement to the benefit, the insurer may delay determining /hether the person is entitled to the benefit for up to 45 days from the date the isurer received the person's application.

(4) An insurer that is required to pay an income replacement, non-earner r caregiver benefit shall pay the benefit at least once every second week.

(5) Subsection (4) does not apply if the insurer prepays amounts owing nder the benefit.

ELECTION OF INCOME REPLACEMENT, NON-EARNER OR CAREGIVER BENEFIT

36. (1) Only one of the following benefits may be paid to a person in respect f a period of time:

1. **An income replacement benefit.**
2. **A non-earner benefit.**
3. **A caregiver benefit.**

(2) If a person's application indicates that he or she may qualify for more ian one of the benefits referred to in subsection (1), the insurer shall notify the erson that he or she must elect within 30 days after receiving the notice which enefit he or she wishes to receive.

(3) The insurer shall deliver the notice under subsection (2) within 14 days fter receiving the person's application.

REFUSAL OR STOPPAGE OF INCOME REPLACEMENT, NON-EARNER OR CAREGIVER BENEFIT

37. (1) If the insurer determines that a person is not entitled or is no longer ntitled to receive an income replacement, non-earner or caregiver benefit, the isurer shall give the person notice of its determination, with reasons,

(a) within 14 days after receiving an application for the benefit; or

(b) if the insurer has been paying the benefit to the person, no later t the date the next payment of the benefit is due.

(2) If notice is given under clause (1)(b), the insurer shall specify in notice a date for stopping the benefit and the insurer may stop payment of benefit in accordance with the notice.

(3) If notice is given under clause (1)(b) for the reason that the person longer suffers from the disability in respect of which the benefit was paid,

(a) the date specified under subsection (2) shall be at least 14 days a the person receives the notice;

(b) the notice under clause (1)(b) shall inform the person that he or has the right to require an assessment in accordance with section by giving the insurer written notice before the date specified un subsection (2); and

(c) despite subsection (2), the insurer shall not stop payment of the ben if, within 14 days after receiving the notice under clause (1)(b), person gives the insurer written notice that he or she requires assessment in accordance with section 43.

(4) If the person gives the insurer written notice under clause (3)(c) that or she requires an assessment and the report from the designated assessm centre states that the person no longer suffers from the disability in respect which the benefit was paid, the insurer may stop paying the benefit after it h provided the person with notice of its reasons for stopping payment.

(5) If the person gives the insurer written notice under clause (3)(c) that or she requires an assessment and the report from the designated assessme centre states that the person continues to suffer from the disability in respect which the benefit is paid, the insurer may dispute the obligation to pay the bene in accordance with sections 279 to 283 of the *Insurance Act*, and, pending t resolution of the dispute, the insurer shall pay the benefit.

(6) Nothing in this section prevents a person from disputing a stoppage the payment of a benefit in accordance with sections 279 to 283 of the *Insuran Act* and section 50 of this Regulation and, if it is finally determined that payme of the benefit should not have been stopped, the insurer shall,

(a) resume payment of the benefit; and

(b) pay any amounts under the benefit that were not paid.

MEDICAL AND REHABILITATION BENEFITS

38. (1) Before expenses in respect of which a medical or rehabilitatio benefit may be payable are incurred, the insured person shall submit an appl cation for the benefit to the insurer.

(2) The application must include a treatment plan.

(3) The treatment plan shall include a statement by the member of a health rofession who prepared the plan,

(a) disclosing any conflict of interest that he or she has relating to the treatment plan;

(b) indicating that he or she has made reasonable inquiries to determine whether any person who referred the insured person to a person who will provide goods or services contemplated by the treatment plan has a conflict of interest relating to the treatment plan; and

(c) disclosing any conflict of interest that a person who referred the insured person to a person who will provide goods or services contemplated by the treatment plan has relating to the treatment plan.

(4) A lawyer or other representative who acts for the insured person in spect of the application or in respect of any civil proceeding arising from the cident shall, at the time the application is submitted, give the insurer and the sured person written notice disclosing any conflict of interest that the lawyer other representative has relating to the treatment plan.

(5) If a conflict of interest is disclosed under subsection (3) or (4), the insurer ay, within 14 days after receiving the application, give the insured person tice that the application is refused and that the insured person may submit a w application.

(6) Subsection (5) does not apply if there is no other person within 50 ometres of the insured person's residence who is able to provide the goods or vices from which the conflict of interest arises.

(7) On receiving the application, the insurer shall promptly determine ether the insurer is required to pay for the goods and services contemplated the treatment plan.

(8) If no notice is given under subsection (5), the insurer shall, within 14 s after receiving the application, give the insured person a notice,

(a) stating that,

(i) the insurer will pay for all goods and services contemplated by the treatment plan,

(ii) the insurer will pay for such goods and services contemplated by the treatment plan as are specified in the notice, or

(iii) the insurer will not pay for any goods and services contemplated by the treatment plan; and

(b) disclosing any conflict of interest that the insurer has relating to the treatment plan.

(9) If the insurer discloses a conflict of interest relating to the treatr plan, the insured person may, within 14 days after receiving the notice ui clause (8)(b), withdraw the application and submit a new application.

(10) Subsection (9) does not apply if there is no other person withi kilometres of the insured person's residence who is able to provide the gooc services from which the conflict of interest arises.

(11) If the application is not withdrawn under subsection (9), the ins shall pay for goods and services described in the notice under subclause (8)(or (ii) within 30 days after receiving an invoice for them.

(12) If the notice under clause (8)(a) indicates that there are good services contemplated by the treatment plan that the insurer will not pay f

(a) the insurer shall require the insured person to be assessed in res of those goods and services by a designated assessment centre ir cordance with section 43; and

(b) the insurer shall include in the notice under subsection (8),

(i) a statement of the insurer's reasons for not agreeing to pay all goods and services contemplated by the treatment plan, a

(ii) notice that the insurer requires the insured person to be asse by a designated assessment centre in accordance with sectio

(13) Despite clause (12)(a), no assessment by a designated assessment ce shall be required if, within seven days after receiving the notice under subcl (12)(b)(ii), the insured person gives the insurer written notice that he or she not make any claim in respect of the goods or services that the insurer indicated it will not pay for.

(14) Subject to the determination of a dispute relating to the expens accordance with sections 279 to 283 of the *Insurance Act*,

(a) if a report from the designated assessment centre states that, in opinion of the person or persons who conducted the assessment expense is reasonable and necessary for the insured person's treatn or rehabilitation, the insurer shall pay for the expense;

(b) if a report from the designated assessment centre does not state t in the opinion of the person or persons who conducted the assessm an expense is reasonable and necessary for the insured person's tr ment or rehabilitation, the insurer is not required to pay for the pense.

(15) Despite subsection (12), an insurer shall not require an assessmen a designated assessment centre, and shall not give the notice referred t subclause (12)(b)(ii), in respect of a claim for the following expenses:

1. Expenses for assistive devices partially paid for by the Ministr

Health, including wheelchairs or other mobility devices, prostheses and orthotics.

2. **Expenses for prescription eyewear, hearing aids, or dentures or other dental devices.**

3. **Expenses for transportation to or from counselling sessions, training sessions, treatment sessions or assessments, including transportation for an aide or attendant.**

4. **Vocational rehabilitation expenses payable by the insurer until a dispute over whether a benefit is payable under the *Workers Compensation Act* is resolved.**

(16) Subject to subsection (14), if the treatment plan contemplates goods r services provided by a chiropractor or physiotherapist, the insurer shall, lespite requiring the insured person to be assessed by a designated assessment entre under subsection (12) in respect of those goods or services, pay for all xpenses incurred, after submission of the treatment plan, in respect of those oods and services, up to the lesser of the following amounts:

1. **The total expenses incurred on behalf of the insured person in respect of the first 15 treatment sessions with a chiropractor or physiotherapist after the accident.**

2. **The total expenses incurred on behalf of the insured person in respect of all treatment sessions with a chiropractor or physiotherapist within six weeks after the accident.**

(17) If an insured person incurs expenses in respect of which a medical or ehabilitation benefit may be payable without complying with subsection (1), (2) r (3), the insured person shall submit to the insurer an application for payment f the expenses that complies with subsections (2) and (3) within 30 days after ncurring the expenses.

(18) Despite subsection (1), if the insurer receives an application under ubsection (17), the insurer shall, within 30 days after receiving the application,

(a) pay the expenses; or

(b) give the insured person notice of its reasons for not paying the expenses.

(19) If, after giving notice under subclause (8)(a)(i) or (ii), it comes to the ttention of the insurer that a person described in subsection (3) or (4) has a onflict of interest relating to the treatment plan, the insurer may give the insured erson notice requiring the insured person, within 14 days after receiving the otice, to amend the treatment plan to remove the conflict of interest.

(20) If the insured person does not comply with a notice under subsection 19), the insurer is not required to pay for any further expenses for goods or ervices from which the conflict of interest arises.

(21) Subsection (20) does not apply if there is no other person within kilometres of the insured person's residence who is able to provide the goods services from which the conflict of interest arises.

(22) Subsections (1) to (21) do not apply if the insurer agrees to pay f expenses without the submission of an application or treatment plan.

(23) If the insurer agrees to pay for expenses without the submission of application or treatment plan, the insurer shall give the insured person a noti disclosing any conflict of interest that the insurer has relating to any goods services to which the insured person is referred by the insurer.

(24) For the purpose of this section,

(a) a person has a conflict of interest relating to a treatment plan if,

(i) the person or a member of the person's family may receive financial benefit, directly or indirectly, as a result of the provisio by a member of the person's family or another person, of goo or services contemplated by the treatment plan, and

(ii) the person who may receive the financial benefit is not the er ployee of the person who will provide the goods or services a does not have a contract with the person who will provide t goods or services under which goods or services of that kind a provided; and

(b) an insurer has a conflict of interest relating to goods or services which an insured person is referred by the insurer if the insurer m receive a financial benefit, directly or indirectly, as a result of t provision of the goods or services.

(25) In clause (24)(a),

"member of the person's family" means, in the case of a person who is not corporation, any other person connected with the person by blood relatio ship, marriage or adoption, and

(a) persons are connected by blood relationship if one is the child or oth descendent of the other or one is the brother or sister of the other,

(b) persons are connected by marriage if one is the spouse of the other of a person who is connected by blood relationship to the other, and

(c) persons are connected by adoption if one has been adopted, eith legally or in fact, as the child of the other or as the child of a pers who is connected by blood relationship (otherwise than as a broth or sister) to the other.

ATTENDANT CARE BENEFIT

39. (1) Within 14 days after receiving an application for an attendant ca benefit, an insurer shall,

(a) give the insured person notice that it has approved the application, if the insurer determines that it is required to pay for the expenses described in the application; or

(b) give the insured person notice that the insurer requires the insured person to furnish a certificate from a member of a health profession who is authorized by law to treat the person's impairment stating that the expenses described in the application are reasonable and necessary for the person's care.

(2) If the application is for an attendant care benefit in respect of expenses are of a continuing nature, the insurer may require a certificate described ause (1)(b) to be furnished as often as is reasonably necessary.

(3) If the insurer is required to pay the benefit, it shall begin payment of benefit within 30 days after receiving the application or, if the insurer has ired a certificate, within 14 days after receiving the certificate.

(4) If the insurer determines that an insured person is not entitled or is no er entitled to receive an attendant care benefit, the insurer shall require the on to be assessed in accordance with section 43 and shall give the person e of its determination and the requirement for the assessment, with reasons,

(a) within 14 days after receiving the application or, if the insurer required a certificate, within 14 days after receiving the certificate; or

(b) if the insurer has been paying the benefit to the person, no later than the date the next payment of the benefit is due.

(5) Despite subsection (4), if more than 104 weeks have elapsed since the lent, the insurer shall not require an assessment of the insured person unless,

(a) the insured person has not been assessed by a designated assessment centre since the accident; or

(b) at least 52 weeks have elapsed since the insured person was last assessed by a designated assessment centre.

(6) If an assessment is required under subsection (4), the insurer shall pay nsured person the attendant care benefit pending receipt of the report of esignated assessment centre.

(7) The determination by the designated assessment centre is binding on nsured person and the insurer, subject to the determination of a dispute, in rdance with sections 279 to 283 of the *Insurance Act*, related to the attendant benefit.

(8) If the insured person requires an increased level of attendant care, the ed person shall submit a new application to the insurer.

DETERMINATION OF CATASTROPHIC IMPAIRMENT

40. (1) An insured person who sustains an impairment as a result of accident may apply to the insurer for a determination of whether the impairme is a catastrophic impairment.

(2) The insurer shall, within 30 days after it receives the application,

(a) determine that the impairment is a catastrophic impairment and gi the insured person notice of the determination;

(b) determine that the impairment is not a catastrophic impairment a give the insured person notice of the determination, including t reasons for the determination; or

(c) give the insured person notice that the insurer requires the insur person to be assessed by a designated assessment centre in accordan with section 43.

(3) If the insured person receives a notice under clause (2)(b) and t insured person disputes the insurer's determination, the insured person m require that he or she be assessed by a designated assessment centre in acc dance with section 43.

(4) The determination by the designated assessment centre is binding the insured person and the insurer, subject to the determination of a dispute, accordance with sections 279 to 283 of the *Insurance Act*, relating to whether t impairment is a catastrophic impairment.

OTHER BENEFITS

41. (1) If a person is entitled to a death benefit, a funeral benefit or a bene under Part VI, the insurer shall pay the benefit within 30 days after the insur receives the application for the benefit.

(2) If the insurer refuses to pay a benefit referred to in subsection (1), t insurer shall give the person notice of the reasons for the refusal within 30 da after the insurer receives the application for the benefit.

INSURER EXAMINATIONS

42. (1) For the purpose of determining whether an insured person is en tled to a benefit, except a funeral or death benefit, an insurer may give t insured person notice requiring him or her to be examined by one or mo persons specified by the insurer, each of whom is a member of a health professi or a person with expertise in vocational rehabilitation.

(2) The notice shall state the benefit to which the examination relates.

(3) The insurer may require examinations as often as is reasonably nec sary.

(4) The insurer shall make reasonable efforts to schedule the examination time that is convenient for the insured person and shall provide the insured on with reasonable notice of the examination.

(5) For the purpose of the examination,

(a) the insured person shall provide the person or persons who conduct the examination with such information as is reasonably necessary; and

(b) the insured person shall submit to any reasonable physical, psychological, mental and functional examinations requested by the person or persons who conduct the examination.

(6) The person or persons who conduct the examination shall prepare a rt and provide a copy of the report to the insurer.

(7) An insurer that receives a report under subsection (6) shall provide the red person with a copy of the report within seven days.

(8) If an insured person fails or refuses to submit to an examination re-ed by the insurer under this section or fails to comply with subsection (5),

(a) the insurer may stop payment of the benefit related to the examination until the person submits to the examination or complies with subsection (5), after which time the insurer shall resume payment of the benefit; and

(b) no benefit is payable for the period after the giving of the notice under subsection (1) or the failure to comply with subsection (5) and before the insured person submits to the examination and complies with subsection (5).

ASSESSMENTS

43. (1) If an assessment is required to be conducted by a designated as-nent centre,

(a) the insurer shall, within 15 days, notify the designated assessment centre; and

(b) the designated assessment centre shall promptly notify the insured person and arrange for the assessment.

(2) For the purpose of the assessment,

(a) the insured person and the insurer shall provide the person or persons who conduct the assessment with such information as is reasonably necessary; and

(b) the insured person shall submit to any reasonable physical, psychological, mental and functional examinations requested by the person or persons who conduct the assessment.

(3) If an insured person does not make himself or herself reasonably av able for an assessment or fails to comply with subsection (2),

(a) the insurer may stop payment of the benefit related to the assessm until the person submits to the assessment or complies with subsecti (2), after which time the insurer shall resume payment of the bene and

(b) no benefit is payable for the period after the insured person failed make himself or herself reasonably available or failed to comply w subsection (2) and before the insured person makes himself or hers reasonably available and complies with subsection (2).

(4) After conducting the assessment, the person or persons who conduc the assessment shall prepare a report and provide a copy of the report to,

(a) the insurer;

(b) the insured person; and

(c) the insured person's health practitioner.

(5) If the assessment is required under section 37 in respect of a claim f an income replacement, non-earner or caregiver benefit, the report shall inclu a statement as to whether the insured person continues to suffer from the d ability in respect of which the benefit is being paid.

(6) If the assessment is required under section 38 in respect of a claim f a medical or rehabilitation benefit, the report shall include,

(a) a statement of whether, in the opinion of the person or persons w conducted the assessment, an expense in respect of the benefit is r sonable and necessary for the insured person's treatment or rehab itation; and

(b) recommendations on the future provision of goods and services to t insured person for his or her treatment or rehabilitation.

(7) If the assessment is required under section 39 in respect of a claim f an attendant care benefit, the report shall include,

(a) a determination in accordance with Form 1 of the amount to be p by the insurer for the future provisions of attendant care services; a

(b) recommendations on the future provision of attendant care services the insured person.

(8) If the assessment is required under section 40 to determine whether impairment is a catastrophic impairment, the report shall include a statem of whether, in the opinion of the person or persons who conducted the assessme the impairment is a catastrophic impairment.

METHOD OF PAYMENT

44. (1) An insurer shall pay a benefit under this Regulation,

(a) by mailing or delivering a cheque payable to the person entitled to the benefit to the address where the person ordinarily resides; or

(b) with the consent of the person entitled to the benefit, by electronic funds transfer to an account in the name of the person.

(2) Despite subsection (1),

(a) an insurer may arrange to be invoiced directly and to pay directly for goods or services provided in respect of an insured person; or

(b) an insurer may pay a benefit into court under section 271 of the *Insurance Act.*

EXPLANATION OF BENEFIT AMOUNTS

45. When a benefit is first paid or the amount of the benefit is subsequently nged, the insurer shall provide the insured person with a written explanation ow the amount of the benefit was determined.

OVERDUE PAYMENTS

46. (1) An amount payable in respect of a benefit is overdue if the insurer s to pay the benefit within the time required under this Part.

(2) If payment of a benefit under this Regulation is overdue, the insurer ll pay interest on the overdue amount for each day the amount is overdue n the date the amount became overdue at the rate of 2 per cent per month ipounded monthly.

REPAYMENTS TO INSURER

47. (1) A person shall repay to the insurer,

(a) any benefit under this Regulation that is paid to the person as a result of an error on the part of the insurer, the insured person or any other person, or as a result of wilful misrepresentation or fraud;

(b) any income replacement or non-earner benefit that is paid to the person if he or she, or a person in respect of whom the payment was made, was disqualified from payment under Part IX; or

(c) any income replacement, non-earner or caregiver benefit or any benefit under Part VI, to the extent of any payments received by the person that are deductible from those benefits under this Regulation.

(2) If a person is required to repay an amount to an insurer under th section,

(a) the insurer shall give the person notice of the amount that is requir to be repaid; and

(b) if the person is receiving an income replacement or caregiver benef the insurer may give the person notice that the insurer intends to colle the repayment by deducting up to 20 per cent of the amount of t benefit from each payment of the benefit.

(3) The obligation to repay a benefit does not apply unless the notice und subsection (2) is given within 12 months after the payment was made.

(4) Subsection (3) does not apply if the benefit was paid as a result of wilf misrepresentation or fraud.

(5) An insurer that has given the notice referred to in clause (2)(b) m collect the repayment by deducting up to 20 per cent of the amount of the bene from each payment of the benefit.

(6) The insurer may charge interest on an amount repayable under th section from the fifteenth day after notice is given under subsection (2) at t bank rate in effect on that day.

(7) In subsection (6),

"bank rate" means the bank rate established by the Bank of Canada as t minimum rate at which the Bank of Canada makes short term advances the banks listed in Schedule I to the *Bank Act (Canada)*.

TERMINATION OF BENEFITS FOR MATERIAL MISREPRESENTATION

48. (1) If an insured person has wilfully misrepresented material facts wi respect to an application for a benefit, the insurer may terminate payment the benefit.

(2) The insurer shall not terminate payment under subsection (1) unle the insurer provides the insured person with notice of the reasons for terminati payment.

RIGHT TO DISPUTE

49. If an insurer refuses to pay a benefit under this Regulation or reduc the amount of a benefit that a person is receiving under this Regulation, t insurer shall inform the person in writing of the procedure for resolving disput relating to benefits under sections 279 to 283 of the *Insurance Act*.

ASSESSMENT BEFORE MEDIATION

50. An insured person shall not commence a mediation proceeding und section 280 of the *Insurance Act unless,*

(a) he or she notified the insurer of the circumstances giving rise to a claim for a benefit and submitted an application for the benefit within the times prescribed by this Part;

(b) he or she made himself or herself reasonably available for any examination required by the insurer under section 42; and

(c) he or she made himself or herself reasonably available for any assessment under section 43 and he or she complied with subsection 43(2) in respect of the assessment.

TIME LIMIT FOR PROCESSING

51. (1) A mediation proceeding or evaluation under section 280 or 280.1 he *Insurance Act* or a court proceeding or arbitration under clause 281(1)(a) b) of the Act in respect of a benefit under this Regulation shall be commenced hin two years after the insurer's refusal to pay the amount claimed.

(2) Despite subsection (1), a court proceeding or arbitration under clause (1)(a) or (b) of the *Insurance Act* may be commenced within 90 days after mediator reports to the parties under subsection 280(8) of the Act or within days after the person performing the evaluation provides a report to the ties under section 280.1 of the Act, whichever is later.

PART XI
DESIGNATED ASSESSMENT CENTRES

ESTABLISHMENT OF DESIGNATED ASSESSMENT CENTRES

52. The committee appointed under section 7 of the *Insurance Act shall,*

(a) designate assessment centres for the purpose of this Regulation;

(b) specify the types of impairments that each designated assessment centre is authorized to assess; and

(c) specify the types of assessments that each designated assessment centre is authorized to conduct.

PLACE OF ASSESSMENT

53. (1) An assessment shall be conducted by the designated assessment tre nearest to the insured person's residence that,

(a) is authorized to assess impairments of the type sustained by the insured person; and

(b) is authorized to conduct the type of assessment that is required.

(2) Before conducting an assessment, a designated assessment centre sh give the insurer and the insured person written notice disclosing any conflict interest that the centre has relating to the assessment.

(3) If a conflict of interest is disclosed under subsection (2),

(a) the designated assessment centre or another designated assessme centre shall conduct the assessment, if the insurer and the insur person agree; or

(b) if the parties do not agree, the assessment shall be conducted, subj to subsection (2), by the designated assessment centre next nearest the insured person's residence that,

(i) is authorized to assess impairments of the type sustained by t insured person, and

(ii) is authorized to conduct the type of assessment that is require

(4) If the designated assessment centre determined in accordance with su section (1) or clause (3)(b) is more than 100 kilometres from the insured perso residence, the insurer and the insured person shall endeavour to agree on o or more persons, at least one of whom is a health practitioner, to conduct t assessment.

(5) If the insurer and the insured person cannot agree under subsection (the insured person shall be assessed at the designated assessment centre dete mined in accordance with subsection (1) or clause (3)(b), as the case may be.

(6) Subsections (4) and (5) do not apply to an assessment required und section 39 or 40.

(7) The designated assessment centre must begin the assessment within tv weeks after receiving a request for the assessment.

(8) If the designated assessment centre is unable to begin the assessme within two weeks after receiving the request, the insured person or the insur may require that, subject to subsection (2), the assessment be conducted by t designated assessment centre next nearest to the insured person's residence tha

(a) is authorized to assess impairments of the type sustained by the insur person; and

(b) is authorized to conduct the type of assessment that is required.

(9) For the purpose of this section, a designated assessment centre has conflict of interest relating to the assessment if,

(a) the insurer, the insured person or a lawyer or other representati acting on behalf of the insurer or the insured person has a financi interest in the designated assessment centre; or

(b) the designated assessment centre, a related person or a facility owned or controlled, directly or indirectly, in whole or in part, by the centre or a related person,

(i) has provided goods or services to the person to be assessed, other than a previous assessment to which section 43 applied,

(ii) prepared or approved a treatment plan for the person to be assessed, or

(iii) is identified by a treatment plan as a person who will provide goods or services to the person to be assessed.

(10) In clause (9)(b),

"related person" means an owner of, employee of, partner in, business associate of or consultant retained by the designated assessment centre.

GOODS OR SERVICES AFTER ASSESSMENT

54. (1) A designated assessment centre that conducts an assessment under Regulation of a person who sustains an impairment as a result of an accident ll not, after the assessment, provide any goods or services to the person in pect of the accident.

(2) Subsection (1) does not apply if,

(a) the insured person and the insurer agree; or

(b) there is no other person within 50 kilometres of the insured person's residence who is able to provide the goods or services.

(3) Subsection (1) does not prevent the designated assessment centre from ducting another assessment of the person.

PART XII
RESPONSIBILITY TO OBTAIN TREATMENT, PARTICIPATE IN REHABILITATION AND SEEK EMPLOYMENT

TREATMENT AND REHABILITATION

55. (1) An insured person entitled to an income replacement, non-earner caregiver benefit shall obtain such treatment and participate in such rehabitation as is reasonable, available and necessary to,

(a) permit the insured person to engage in employment that satisfies the criteria set out in subsection (2), in the case of an insured person entitled to an income replacement benefit; or

(b) shorten the period during which the benefit is payable, in any oth case.

(2) The criteria referred to in clause (1)(a) are:

1. The insured person,

   i. is able and qualified to perform the essential tasks of t employment, or

   ii. would be able and qualified to perform the essential tasks the employment if the insured person obtained treatment a participated in rehabilitation that is reasonable, available a necessary to permit the person to engage in the employme

2. The employment exists in the area in which the insured pers lives.

3. It would be reasonable to expect the insured person to engage the employment having regard to the possibility of deteriorati in the insured person's impairment and to the insured perso personal and vocational characteristics.

(3) Subsection (1) does not apply if compliance with subsection (1) wou be detrimental to the insured person's treatment or recovery.

(4) If an insured person does not comply with subsection (1), the insur may notify the insured person that the insurer intends to reduce the amount the benefit in accordance with subsection (5).

(5) If at least 14 days have elapsed after giving the notice and the insur person is still not complying with subsection (1), the insurer may reduce t amount of the benefit by 50 per cent.

EMPLOYMENT

56. (1) An insured person who is entitled to an income replacement bene shall make reasonable efforts to,

(a) return to the employment in which he or she engaged at the time the accident; or

(b) obtain employment for which he or she is reasonably suited by ed cation, training or experience.

(2) Subsection (1) does not apply if,

(a) employment would be detrimental to the insured person's treatme or recovery; or

(b) the insured person is participating in a vocational rehabilitation pr gram.

(3) If an insured person does not comply with subsection (1), the insurer notify the insured person that the insurer intends to reduce the amount of benefit in accordance with subsection (4).

(4) If at least 14 days have elapsed after giving the notice and the insured son is still not complying with subsection (1), the insurer may reduce the ount of the benefit by 50 per cent.

(5) Subsections (3) and (4) do not apply if the insurer is reducing the amount enefit under subsection 55(5).

PART XIII
INTERACTION WITH OTHER SYSTEMS

ACCIDENTS OUTSIDE ONTARIO

57. (1) If, as a result of an accident in another province or territory of ada or a jurisdiction in the United States of America, a person insured in jurisdiction dies or sustains an impairment or incurs an expense described ection 14, 15 or 16, the insurer shall pay, as the person may elect,

(1.1) Subsection (1) does not apply if the person receives benefits under the of the jurisdiction in which the accident occurred. O. Reg. 462/96, s. 8(1).

(a) benefits provided by this Regulation, other than the benefits referred to in clause (b); or

(b) benefits in the same amounts and subject to the same conditions as if the person was a resident of the jurisdiction in which the accident occurred and was entitled to payments under the law of that jurisdiction.

(2) A person who elects to claim a benefit as provided in clause (1)(a) is reafter eligible only for benefits referred to in that clause.

(3) A person who elects to claim a benefit as provided in clause (1)(b) is reafter ineligible for benefits referred to in clause (1)(a).

(4) For the purpose of this section, a person is insured in the jurisdiction in ch the accident occurred if the person, at the time of the accident,

(a) was authorized by law to be or to remain in Canada and was living and ordinarily present in Ontario;

(b) met the criteria prescribed for recovery under the law of the jurisdiction in which the accident occurred;

(c) was not the owner or driver of, or an occupant of an automobile registered in the jurisdiction in which the accident occurred; and

(d) was,

(i) an occupant of the insured automobile,

(ii) the named insured, a person specified in the policy as a driver the insured automobile, the spouse of the named insured or dependant of the named insured or spouse, while the occupant any automobile,

(iii) a person who was not the occupant of an automobile and w struck by the insured automobile,

(iv) the name insured, his or her spouse or a dependant of either them and was struck by any automobile,

(v) if the named insured is a corporation, unincorporated associatic partnership or sole proprietorship, a person for whose regul use the insured automobile was supplied, his or her spouse or dependant of either of them who suffered an impairment,

(A) while the occupant of any automobile,

(B) by any automobile while not the occupant of the automobi or

(vi) a person struck by an automobile that was driven by a pers described in subclause (i), (ii) or (v). O. Reg. 462/96, s. 8(2).

SOCIAL ASSISTANCE PAYMENTS

58. (1) The insurer shall pay benefits under this Regulation even thou the insured person is entitled to, or has received, benefits under an Act admi istered by the Ministry of Community and Social Services for Ontario or und similar legislation in another jurisdiction.

(2) For the purpose of subsection (1), a service, benefit or entitlement pr vided under an Act, the administration of which was transferred from the Mi istry of Community and Social Services to the Ministry of Health by order council, shall be deemed to be provided under an Act administered by t Ministry of Community and Social Services for Ontario so long as the nature the service, benefit or entitlement remains substantially the same as it was befo the transfer.

WORKERS' COMPENSATION BENEFITS

59. (1) The insurer is not required to pay benefits under this Regulation respect of any insured person who, as a result of an accident, is entitled to recei benefits under any workers' compensation law or plan.

(2) Subsection (1) does not apply in respect of an insured person who ele to bring an action referred to in section 10 of the *Workers' Compensation Act*

g as the election is not made primarily for the purpose of claiming benefits ıder this Regulation.

(3) If a person is entitled to receive benefits under this Regulation as a result ın election made under section 10 of the *Workers' Compensation Act*, no income ılacement, caregiver or non-earner benefit is payable to the person in respect ıny period of time before the person makes the election. O. Reg. 462/96, s. 9.

(4) If a person who would be entitled to benefits under this Regulation in absence of subsection (1) elects to bring an action referred to in section 10 of *Workers' Compensation Act* and there is a dispute concerning the insurer's bility to pay an expense for a vocational rehabilitation program that the person s attending at the time of the election and continues to attend, the insurer ıll pay the expense pending resolution of the dispute.

(5) Despite subsection (1), if there is a dispute about whether subsection (1) plies to a person, the insurer shall pay full benefits to the person under this gulation pending resolution of the dispute if,

(a) the person makes an assignment to the insurer of any benefits under any workers' compensation law or plan to which he or she is or may become entitled as a result of the accident; and

(b) the administrator or board responsible for the administration of the workers' compensation law or plan approves the assignment.

OTHER COLLATERAL BENEFITS

60. (1) The insurer may deduct the following amounts from the amount yable to an insured person as an income replacement or non-earner benefit:

1. Any temporary disability benefits being received by the insured person in respect of a period following the accident and in respect of an impairment that occurred before the accident.

2. Any other periodic benefit being received by the insured person in respect of a period following the accident and in respect of an impairment that occurred before the accident, if the insured person was receiving the other periodic benefit at the time he or she first qualified for the income replacement or non-earner benefit, and, at that time, the other periodic benefit was a temporary disability benefit.

(2) Payment of a medical, rehabilitation or attendant care benefit or a nefit under Part VI is not required for that portion of an expense for which yment is reasonably available to the insured person under any insurance plan law or under any other plan or law.

(3) In this section,

"emporary disability benefit" means,

(a) an income replacement or caregiver benefit paid under this Regul tion,

(b) a non-earner benefit paid under this Regulation, unless the benefit paid more than 104 weeks after the onset of the disability,

(c) benefits paid under Part II, III or IV or section 32 of Ontario Reg lation 776/93,

(d) benefits paid under Part V of Ontario Regulation 776/93, unless th benefits have been paid for more than 104 weeks,

(e) benefits paid under Part IV of Regulation 672 of the Revised Regul tions of Ontario, 1990, unless the benefits have been paid for mo than 156 weeks,

(f) benefits paid under Part II of Subsection 2 of Schedule C to the *Insu ance Act* as it existed before June 22, 1990, unless the benefits ha been paid for more than 104 weeks,

(g) benefits paid under section 37, subsection 43(9) or subsection 147(of the *Workers' Compensation Act*, or

(h) any other periodic temporary benefit paid under an income contin ation benefit plan or law, other than,

(i) benefits under the *Employment Insurance Act* (Canada),

(ii) a non-earner benefit paid under this Regulation more than 10 weeks after the onset of the disability,

(iii) benefits paid under Part V of Ontario Regulation 776/93 for mo than 104 weeks,

(iv) benefits paid under Part IV of Regulation 672 of the Revise Regulations of Ontario, 1990 for more than 156 weeks, or

(v) benefits paid under Part II of Subsection 2 of Schedule C to th *Insurance Act* as it existed before June 22, 1990 that have bee paid for more than 104 weeks. O. Reg. 462/96, s. 10.

PART XIV
INCOME CALCULATION

NET WEEKLY INCOME FORMULA

61. (1) For the purpose of this Regulation, a person's net weekly incom from employment shall be determined in accordance with the following formula

$$A = \frac{B - C - D - E}{52}$$

ere,

= the person's net weekly income from employment,

= the person's gross annual income from employment,

= the annual premium payable by the person under the *Employment Insurance Act* (Canada) on the gross annual income from employment,

= the annual contribution payable by the person under the Canada Pension Plan (Canada) on the gross annual income from employment.

= the income tax payable by the person under the *Income Tax Act* (Canada) and the *Income Tax Act* (Ontario) on the gross annual income from employment.

(2) For the purpose of subsection (1), the person whose net weekly income m employment is to be determined shall be deemed to be a resident of Ontario.

INCOME FROM SELF-EMPLOYMENT

62. (1) For the purpose of this Regulation, a person's income from self-ployment shall be determined in the same manner as the person's profit from business in which the person was self-employed would be determined under *Income Tax Act* (Canada) and the *Income Tax Act* (Ontario), but without ding into account,

(a) expenses that are eligible for capital cost allowance or an allowance on eligible capital property;

(b) capital gains or losses; or

(c) losses deductible under section 111 of the *Income Tax Act* (Canada).

(2) Despite subsection (1), an insurer and a named insured who is self-ployed and not otherwise employed may agree in a contract evidenced by a otor vehicle liability policy that, for the purpose of determining benefits under s Regulation in respect of an accident that occurs during the period covered the contract, the named insured's gross income from self-employment for ery week shall be deemed to be the weekly income amount specified in the ntract if, at the time of the accident, the person continues to engage in the self-ployment in which he or she engaged at the time the contract was entered o and the person is not otherwise employed.

(3) In specifying a weekly income amount for the purpose of subsection (2), insurer and insured may use information from any source, including,

(a) personal and corporate income tax returns and assessments;

(b) personal and corporate financial statements; and

(c) published data on the average wage for the industry or occupation which the insured is self-employed.

INCOME TAX CALCULATIONS

63. (1) For the purpose of this Regulation, the income tax payable by person under the *Income Tax Act* (Canada) and the *Income Tax Act* (Ontari shall be determined having regard to only the following deductions and t credits that apply to the person under those Acts:

1. Alimony and maintenance payments deduction.
2. Basic personal tax credit.
3. Married person's tax credit or equivalent to married tax credit.
4. Age tax credit.
5. Disability tax credit.
6. Employment insurance premium tax credit.
7. Canada Pension Plan tax credit.
8. Quebec Pension Plan tax credit.

(2) If a determination of the income tax payable by a person under t *Income Tax Act* (Canada) and the *Income Tax Act* (Ontario) is necessary determine the amount of a benefit under this Regulation, the applicant for t benefit shall provide the insurer with such information as is reasonably necessa to enable the insurer to make the determination. O. Reg. 462/96, s. 11.

(3) Failure to comply with subsection (2) does not relieve the insurer fro any time limit established by this Regulation for the payment of the benefit, b the insurer shall determine the amount of the benefit on the basis of its be estimate of the income tax payable by the person under the *Income Tax A* (Canada) and the *Income Tax Act* (Ontario), subject to later adjustment of t amount of the benefit when subsection (2) is complied with.

SEVERANCE OR TERMINATION PAY

64. For the purpose of this Regulation, payments of severance pay or te mination pay shall not be included in a determination of a person's income.

PART XV
MISCELLANEOUS

ASSIGNMENT OF BENEFITS

65. (1) The assignment of a benefit under this Regulation is void.

(2) Subsection (1) does not apply to,

(a) an assignment under section 267.8 of the *Insurance Act*;

(b) the assignment of a benefit to the Ministry of Community and Social Services; or

(c) the assignment of a benefit to the Ministry of Health in respect of a service, benefit or entitlement provided under an Act the administration of which was transferred by order in council from the Ministry of Community and Social Services to the Ministry of Health.

COMPANY AUTOMOBILES AND RENTAL AUTOMOBILES

66. (1) An individual who is living and ordinarily present in Ontario shall leemed for the purpose of this Regulation to be the named insured under the cy insuring an automobile at the time of an accident if, at the time of the dent,

(a) the insured automobile is being made available for the individual's regular use by a corporation, unincorporated association, partnership, sole proprietorship or other entity; or

(b) the insured automobile is being rented by the individual for a period of more than 30 days.

(2) An individual who is not living and ordinarily present in Ontario shall leemed for the purpose of this Regulation to be the named insured under the cy insuring an automobile at the time of an accident if, at the time of the dent,

(a) the insured automobile is being made available for the individual's regular use by a corporation, unincorporated association, partnership, sole proprietorship or other entity; and

(b) the individual, his or her spouse or any dependant of either of them is an occupant of the insured automobile. O. Reg. 462/96, s. 12.

COPIES OF REGULATION

67. On request, the insurer shall provide a copy of this Regulation without rge to a named insured or a person entitled to benefits under this Regulation.

NOTICE FROM INSURER

68. If an insurer is required or permitted by this Regulation to give a notice n insured person, the notice shall be given in writing.

FORMS

69. Each of the following documents shall be in a form approved by the mmissioner:

1. The application forms referred to in clause 32(2)(a).
2. A certificate required under section 34.
3. A notice under subsection 36(2).
4. A notice under subsection 37(1).
5. A treatment plan submitted to an insurer under section 38.
6. A certificate required under clause 39(1)(b) or subsection 39(2).
7. An application under subsection 40(1).
8. A notice under subsection 40(2).
9. A report under subsection 43(4).
10. An explanation under section 45.

TRANSITION

70. (1) Despite anything else in this Regulation, if a motor vehicle liabil policy is in effect on the day this Regulation comes into force, subsections (2) a (3) apply until the earlier of the following:

1. The first expiry date under the motor vehicle liability policy.
2. The date on which the motor vehicle liability policy is terminated the insurer or the insured.

(2) The following benefits are deemed to be included in the motor vehi liability policy, and are applicable to an insured person in respect of the mot vehicle liability policy:

1. The optional income replacement benefit referred to in paragraph of subsection 27(1) that fixes the amount referred to in subparagra ii of paragraph 2 of subsection 7(1) at $1,000.
2. The optional caregiver and dependant care benefit referred to in pa agraph 2 of subsection 27(1).
3. The optional death and funeral benefit referred to in paragraph 4 subsection 27(1).

(3) The sum of the medical, rehabilitation and attendant care benefits pa under the motor vehicle liability policy for any one accident in respect of insured person who does not sustain a catastrophic impairment as a result of t accident shall not exceed $1,000,000, and the limits are set out in clauses 19(1)(and (2)(a) do not apply.

COMMENCEMENT

71. (1) This Regulation comes into force on the day section 29 of the *A tomobile Insurance Rate Stability Act, 1996* comes into force.

(2) Despite subsection (1),

(a) subsections 14(4), 15(6), 17(2) and 24(2) come into force on the later of the day section 29 of the *Automobile Insurance Rate Stability Act, 1996* comes into force and the day the *Professional Fees Guidelines* are first published in *The Ontario Gazette* by the Ontario Insurance Commission;

(b) subsections 14(5), 15(11) and 24(3) come into force on the later of the day section 29 of the *Automobile Insurance Rate Stability Act, 1996* comes into force and the day the *Transportation Expense Guidelines* are first published in *The Ontario Gazette* by the Ontario Insurance Commission; and

(c) subsection 29(3) comes into force on the later of the day section 29 of the *Automobile Insurance Rate Stability Act, 1996* comes into force and the day the *Optional Indexation Benefit Guidelines* are first published in *The Ontario Gazette* by the Ontario Insurance Commission.

Form 1
Assessment of Attendant Care Needs

Insurance Act

Return this form to:	Policy No.
	Claim No.

Use this form to report the future needs for attendant care required by the client a result of an automobile accident. This form has five parts:

Part 1: Level 1 Attendant Care
Part 2: Level 2 Attendant Care
Part 3: Level 3 Attendant Care
Part 4: Calculation of Attendant Care Costs
Part 5: Signature of Assessor(s)

Please complete all relevant parts. You will have to make copies and give one t

- the client
- the client's health practitioner
- the client's insurance company

Client's Name

Client's Name		Date of Birth
Street Address		Date of Accident
City	Province	Postal Code
Name of Policyholder (If different than above)		Policy No.

What is the date of this assessment?

Is this the first assessment of this client? Yes ☐ No ☐

Date of Last Assessment
Current Monthly Allowance

Client's Health Practitioner

Name of Health Practitioner		Telephone No.
Facility or Institution		
Street Address		
City	Province	Postal Code

Insurance Company

Name		Telephone No.
Street Address		
City	Province	Postal Code
Name of Policyholder		Policy No.

Part 1: Level 1 Attendant Care

Level 1 attendant care is for routine personal care. Please assess the care requirements of the client for each activity listed. Estimate the time it takes to perform each activity, and the number of times each week it should be performed. Multiply the number of minutes by the number of times each week the activity should be performed to get the total number of minutes per week for each activity.

		Number of Minutes	×	Times per week	=	Total minutes per week
Dress	Upper Body (for example, underwear, shirt/blouse, sweater, tie, jacket, gloves, jewelry)					
	Lower Body (for example, underwear, disposable briefs, skirt/ pants, socks, panty hose, slippers, shoes)					
				Subtotal		
Undress	Upper Body (for example, underwear, shirt/blouse, sweater, tie, jacket, gloves, jewelry)					
	Lower Body (for example, underwear, disposable briefs, skirt/ pants, socks, panty hose, slippers, shoes)					
				Subtotal		
Prosthetics	applies upper/lower limb prosthesis and stump sock(s)					
	exchanges terminal devices and adjusts prosthesis as required					
	ensures prosthesis is properly maintained and in good working condition					
				Subtotal		
Orthotics	assists dressing client using prescribed orthotics (for example, burn garment(s), brace(s), supports, splints, elastic stockings)					
				Subtotal		
Grooming	Face: wash, rinse, dry, morning and evening					
	Hands: wash, rinse, dry, morning and evening, before and after meals, and after elimination					
	Shaving: shaves client using an electric/safety razor					
	Cosmetics: applies makeup as desired or required					
	Hair:					
	brushes/combs as required					
	shampoos, blow/towel dries					
	performs styling, set and comb-out					
	Fingernails: cleans and manicures as required					
	Toenails: cleans and trims as required					
				Subtotal		

Part 1 continued . . .

		Number of Minutes	×	Times per week	=	Total minutes per week
Feeding	prepares client for meals (includes transfer to appropriate location)					
	provides assistance, either in whole or in part, in serving and feeding meals					
				Subtotal		
Mobility (location change such as to and from the bedroom for afternoon rests)	assists client from a sitting position (for example, wheelchair, chair, sofa)					
	supervises/assists in walking					
	performs transfer needs as required (for example, bed to wheelchair, wheelchair to bed)					
				Subtotal		
Extra Laundering	launders client's bedding and clothing as a result of incontinence/ spillage					
	launders/cleans orthotic supplies that require special care					
				Subtotal		
	Part 1 Total – Add all Part 1 Subtotals, Fill in total here and in Part 4 on Page 7.					

Part 2: Level 2 Attendant Care

Level 2 attendant care is for basic supervisory functions. Please assess the care requirements of the client for each activity listed. Estimate the time it takes to perform each activity, and the number of times each week it should be performed. Multiply the number of minutes by the number of times each week the activity should be performed to get the total number of minutes pe week for each activity.

		Number of Minutes	×	Times per week	=	Total minutes per week
Hygiene	Bathroom					
	clean tub/shower/sink/toilet after client's use					
	Bedroom					
	changes client's bedding, makes bed, cleans bedroom, including Hoyer lifts, overhead bars, bedside tables					
	ensures comfort, safety and security in this environment					
	Clothing Care					
	assists in preparing daily wearing apparel					
	hangs clothes and sorts clothing to be laundered/cleaned					
				Subtotal		

art 2 continued . . .

		Number of Minutes	×	Times per week	=	Total minutes per week
Ventilator Dependant (high level quadriplegic or approx.)	client lacks the capacity to reattach tubing if it becomes detached from the trachea					
	client lacks the physical capacity to be self-sufficient in an emergency situation					
				Subtotal		
Spinal Cord Injuries (paraplegic/ quadriplegic)	client requires assistance to transfer from bed to wheelchair, periodic turning, genitourinary care					
	client lacks the physical capacity to be self-sufficient in an emergency situation					
				Subtotal		
Severe Brain Injuries	client lacks ability to respond to an emergency or needs custodial care due to changes in behaviour					
				Subtotal		
Attendant Care on an Intermittent Basis	client lives alone or is left alone in the day, determine the degree to which the client may be dependent on others (for example, meals, laundry, housekeeping)					
	client may be independent during the day when in a wheelchair or wearing a prosthesis, but needs assistance for meals, laundry					
				Subtotal		
Multiple Amputations (upper bilateral, triple, quadruple amputee)	client lacks the ability to independently get in and out of a wheelchair or to be self-sufficient in an emergency					
				Subtotal		
Financial Affairs	client requires assistance in managing financial affairs (maximum 1 hour per week)					
				Subtotal		

Part 2 Total – Add all Part 2 Subtotals, Fill in total here and in Part 4 on Page 7.

Part 3: Level 3 Attendant Care

Level 3 attendant care is for complex health/care and hygiene functions. Please assess the care requirements of the client for each activity listed. Estimate the time it takes to perform each activity, and the number of times each week it should be performed. Multiply the number of minutes by the number of times each week the activity should be performed to get the total number of minutes per week for each activity.

		Number of Minutes	×	Times per week	=	Total minutes per week
Genitourinary Tracts	performs catheterizations					
	positions, empties and cleans drainage systems					
	cleans client and equipment after procedure/incontinence					
	uses disposable briefs as required					
	attends to menstrual cycle needs as required					
	monitors residuals					
				Subtotal		
Bowel Care	administers enemas or suppositories and performs stimulation or disimpaction					
	performs colostomy and/or ileostomy care					
	positions, empties and cleans drainage systems, including ilio-conduits					
	uses disposable briefs as required					
	cleans client and equipment after procedure/evacuation					
				Subtotal		
Tracheostomy Care	changes and cleans inner and outer cannulae as needed					
	changes tapes as required					
	performs suctioning as required					
	cleans and maintains suction equipment					
				Subtotal		
Ventilator Care	ensures volume rate and pressure are maintained as prescribed					
	maintains humidification as specified					
	changes and cleans tubing and filters as required					
	cleans humidification system as required					
	adjusts settings according to client needs (for example, colds, congestion)					
				Subtotal		
Exercise	assists client with prescribed exercise/stretching program					
	assists client with walking activities using crutches, canes, braces and/or walker					
				Subtotal		

art 3 continued . . .

		Number of Minutes	×	Times per week	=	Total minutes per week
Skin Care (excluding bathing)	attends to skin care needs – wounds, sores, eruptions (amputees, severe burns, spinal cord injuries, etc.)					
	applies medication and prescribed dressings					
	applies creams, lotions, pastes, ointments, powders as prescribed or required					
	checks body area(s) for evidence of pressure sores, skin breakdown or eruptions					
	periodic turning to prevent or minimize pressure sores and skin breakdown/shearing					
				Subtotal		
Medication	Oral					
	administers prescribed medications					
	monitors medication intake and effect					
	maintains and controls medication supply					
	Injections					
	administers prescribed medications					
	monitors medication intake and effect					
	maintains and controls medication supply					
	Inhalation/Oxygen Therapy					
	administers prescribed dosage as required					
	maintains and controls inhalation supplies					
	cleans and maintains equipment					
				Subtotal		
Bathing	Bathtub or Shower					
	transfers client to and from bed, wheelchair or Hoyer lifts to bathtub or shower					
	bathes and dries client					
	applies creams, lotions, pastes, ointments, powders as prescribed or required					
	Bed Bath					
	prepares equipment					
	bathes and dries client					
	applies creams, lotions, pastes, ointments, powders as prescribed or required					
	cleans and maintains bed/bath equipment					
	Oral Hygiene					
	brushes and flosses					
	cleanses mouth as required					
	cleans dentures as required					
				Subtotal		

Part 3 continued . . .

		Number of Minutes	× Times per week	= Total minutes per week
Other Therapy	Transcutaneous Electrical Nerve Stimulation (TENS)			
	prepares equipment			
	administers treatment as prescribed or required			
	Dorsal Column Stimulation (DCS)			
	monitors skin			
	maintains equipment			
			Subtotal	
Maintenance of Supplies and Equipment	monitors, orders and maintains required supplies/equipment			
	ensures wheelchairs, prosthetic devices, Hoyer lifts, shower commodes and other specialized medical equipment and assistive devices are safe and secure			
			Subtotal	

Part 3 Total – Add all Part 3 Subtotals. Fill in total here and below.

Part 4: Calculation of Attendant Care Costs

This part must be completed by the assessor. Calculate the monthly attendant care allowance for Part 1, 2, and 3. The sum of all three parts will be the Total Assessed Monthly Attendant Care Benefit.

	Total Minutes Per Week		Total Weekly Hours		Total Monthly Hours		Hourly Rate		Monthly Care Benefit
Part 1 (from Pg. 3)		÷ 60 =		× 4.3 =		X	$9.00	=	
Part 2 (from Pg. 4)		÷ 60 =		× 4.3 =		X	$7.00	=	$
Part 3 (from Pg. 7)		÷ 60 =		× 4.3 =		X	$15.00	=	$

Total Assessed Monthly Attendant Care Benefit (This amount is subject to the limits allowed under the Statutory Accident Benefits Schedule) $

Part 5: Signature(s) of Assessor(s)

Name	Signature
Title Date	
Name of Assessing Facility	Telephone No.
Street Address	Fax No.
City Province	Postal Code

O. Reg. 403/96, am. 462/96, s. 13.

ONTARIO REGULATION 461/96

COURT PROCEEDINGS FOR AUTOMOBILE ACCIDENTS THAT OCCUR ON OR AFTER NOVEMBER 1, 1996

DEFINITION

1. In this Regulation,

"incident" means the incident from which the bodily injury or death arose.

INFORMATION BEFORE ACTION

2. (1) For the purpose of clause 258.3(1)(c) of the Act, the following information must have been provided to the defendant within 30 days after notice was served under clause 258.3(1)(b) of the Act:

1. **The name of the plaintiff's insurer.**
2. **If the plaintiff is making a claim in respect of income loss, evidence of the plaintiff's income from all sources for the 52 weeks immediately preceding the incident.**
3. **If the plaintiff is making a claim arising out of a person's death, the plaintiff's consent to the defendant obtaining a copy of the autopsy report.**

(2) For the purpose of clause 258.3(1)(c) of the Act,

(a) a copy, or the plaintiff's consent to the defendant obtaining a copy, of every application for statutory accident benefits that the plaintiff submitted to the plaintiff's insurer during the time period described in subsection (3) as a result of the incident, and all other material submitted in connection with the applications, must have been provided to the defendant not later than 30 days after the end of that period;

(b) a copy, or the plaintiff's consent to the defendant obtaining a copy, of every application that the plaintiff submitted to another person during the time period described in subsection (3) for benefits that may be available as a result of the incident must have been provided to the defendant not later than 30 days after the end of that period;

(c) a copy of every medical report prepared for the plaintiff during the time period described in subsection (3) in respect of the plaintiff's injuries arising from the incident must have been provided to the defendant not later than 30 days after the end of that period; and

(d) a copy, or the plaintiff's consent to the defendant obtaining a copy, of any clinical notes and records prepared by every member of a health profession who cared for the plaintiff during the time period described in subsection (3) in respect of injuries arising from the incident must have been provided to the defendant not later than 30 days after the end of that period.

(3) The time period referred to in subsection (2) is the period that begins at the time of the incident and ends on the later of the following days:

1. The day the notice is served under clause 258.3(1)(b) of the Act.

2. 120 days after the incident.

(4) Clause (2)(c) and (d) do not apply unless the defendant pays all reasonable expenses incurred in obtaining the material referred to in those clauses.

(5) In clause (2)(d),

"member of a health profession" means a member of a College as defined in the *Regulated Health Professions Act, 1991.*

MEDIATION

3. (1) If a request for mediation is made under subsection 258.6(1) of the Act, the plaintiff and the defendant's insurer shall, within 10 days after the request is made, agree on and appoint a person to be the mediator.

(2) If the plaintiff and the defendant's insurer are unable to agree on the appointment of a mediator, each of them shall, within 10 days after the request is made, name a person to participate in the mediator's appointment, and the two persons named shall together appoint a person to be the mediator.

(3) The mediation shall begin on a date agreed to by the plaintiff and the defendant's insurer or, if they are unable to agree on a date, within 14 days after the mediator is appointed.

(4) The mediator may adjourn the mediation, with or without conditions,

(a) if the plaintiff or the defendant's insurer is represented in the mediation and the representative is not authorized to bind the person he or she represents; or

(b) the plaintiff or defendant is not present at the mediation.

(5) The mediator shall give the plaintiff and the defendant's insurer a written report identifying the issues that were settled and the issues that remain in dispute.

(6) The defendant's insurer shall pay all reasonable fees and expenses of the mediator.

DETERMINATION OF NET INCOME LOSS
AND NET LOSS OF EARNING CAPACITY

4. (1) For the purpose of paragraph 2 of subsection 267.5(1) of the Act, a person's net income loss for a period of time shall be determined by subtracting the person's actual net income for the period from the net income the person would have earned for the period if the incident had not occurred.

(2) For the purpose of subsection (1), a person's net income for a period shall be determined in accordance with the following formula:

$$A = B - C - D - E$$

where,

A = the person's net income for the period,

B = the person's gross income from employment for the period,

C = the premiums payable by the person on the gross income from employment for the period under the *Employment Insurance Act* (Canada),

D = the contribution payable by the person on the gross income from employment for the period under the *Canada Pension Plan* (Canada),

E = the income tax payable by the person on the gross income from employment for the period under the *Income Tax Act* (Canada) and the *Income Tax Act* (Ontario).

(3) For the purpose of subsection (2), a person is employed if, for salary, wages, other remuneration or profit, the person is engaged in employment, including self-employment, or is the holder of an office, and "employment" has a corresponding meaning.

(4) For the purpose of subsection (2), the person whose net income loss is to be determined shall be deemed to be a resident of Ontario.

(5) For the purpose of subsection (2), the income tax payable by a person under the *Income Tax Act* (Canada) and the *Income Tax Act* (Ontario) shall be determined having regard to only the following deductions and tax credits that apply to the person under those Acts:

1. **Alimony and maintenance payments deduction.**
2. **Basic personal tax credit.**
3. **Married person's tax credit or equivalent to married tax credit.**
4. **Age tax credit.**
5. **Disability tax credit.**
6. **Employment insurance premium tax credit.**

7. Canada Pension Plan tax credit.

8. Quebec Pension Plan tax credit.

(6) For the purpose of paragraph 3 of subsection 267.5(1) of the Act, a person's net loss of earning capacity for a period shall be determined in the same manner as it would have been determined by a court before this Regulation came into force.

DEFINITION OF CATASTROPHIC IMPAIRMENT

5. (1) For the purpose of subsection 267.5(4) of the Act,

"catastrophic impairment" means,

(a) paraplegia or quadriplegia,

(b) amputation or other impairment causing the total and permanent loss of use of both arms,

(c) amputation or other impairment causing the total and permanent loss or use of both an arm and a leg,

(d) total loss of vision in both eyes,

(e) brain impairment that, as a result of the incident, results in,

(i) a score of 9 or less on the Glasgow Coma Scale, as published in Jennett, B. and Teasdale, G., *Management of Head Injuries*, Contemporary Neurology Series, Volume 20, F.A. Davis Company, Philadelphia, 1981, according to a test administered within a reasonable period of time after the incident by a person trained for that purpose, or

(ii) a score of 2 (vegetative) or 3 (severe disability) on the Glasgow Outcome Scale, as published in Jennett B. and Bond, M., *Assessment of Outcome After Severe Brain Damage*, Lancet i:480, 1975, according to a test administered more than six months after the incident by a person trained for that purpose,

(f) subject to subsections (2) and (3), any impairment or combination of impairments that, in accordance with the American Medical Association's *Guides to the Evaluation of Permanent Impairment*, 4th edition, 1993, results in 55 per cent or more impairment of the whole person, or

(g) subject to subsections (2) and (3), any impairment that, in accordance with the American Medical Association's *Guides to the Evaluation of Permanent Impairment*, 4th edition, 1993, results in a class 4 impairment (marked impairment) or class 5 impairment (extreme impairment) due to mental or behaviourial disorder.

(2) Clauses (f) and (g) of the definition of "catastrophic impairment" in ubsection (1) do not apply in respect of a person unless,

(a) the person's health practitioner states in writing that the person's condition has stabilized and is not likely to improve with treatment; or

(b) three years have elapsed since the incident.

(3) For the purpose of clauses (f) and (g) of the definition of "catastrophic mpairment" in subsection (1), an impairment that is sustained by a person but s not listed in the American Medical Association's *Guides to the Evaluation of Permanent Impairment*, 4th edition, 1993 shall be deemed to be the impairment hat is listed in that document and that is most analogous to the impairment ustained by the person.

(4) In this section,

"health practitioner", in respect of a particular impairment, means a person authorized by law to practice medicine or,

(a) a person authorized by law to practise chiropractic, if the impairment is one that the person is authorized by law to treat,

(b) a person authorized by law to practise dentistry, if the impairment is one that the person is authorized by law to treat,

(c) a person authorized by law to practise optometry, if the impairment is one that the person is authorized by law to treat,

(d) a person authorized by law to practise psychology, if the impairment is one that the person is authorized by law to treat, or

(e) a person authorized by law to practice physiotherapy, if the impairment is one that the person is authorized by law to treat;

"impairment" means a loss or abnormality of a psychological, physiological or anatomical structure or function.

STRUCTURED JUDGMENTS

6. (1) The court shall order than an award for damages for pecuniary loss be paid periodically under section 267.10 of the Act if two or more of the following circumstances exist:

1. The award, including prejudgment interest but excluding costs, is for $100,000 or more.

2. On the date of the order, the plaintiff is less than 18 years of age.

3. The court is satisfied that the plaintiff has no other means to fund his or her future care.

4. **The court is satisfied that the plaintiff is not likely to manage the award in a prudent manner.**

(2) **Subsection (1) does not apply if the court is satisfied that,**

(a) **sufficient funds to pay the award periodically are not available under a motor vehicle liability policy; or**

(b) **an order to pay the award periodically would have the effect of preventing the plaintiff or another person from obtaining full recovery of a claim arising out of the incident.**

REGULATIONS UNDER THE COMPULSORY AUTOMOBILE INSURANCE ACT

ONTARIO REGULATION 402/96

INSURANCE CARD

1. (1) The following documents are prescribed for the purpose of the definition of "insurance card" in section 1 of the Act:

1. **In the case of a motor vehicle insured under a motor vehicle liability policy issued in another province or territory of Canada, a motor vehicle liability insurance card issued by the insurer.**
2. **In the case of a motor vehicle insured under a motor vehicle liability policy issued in a jurisdiction of the United States of America, a document issued by the insurer or by the government of the jurisdiction indicating that the motor vehicle is insured in accordance with the laws of that jurisdiction.**

(2) In subsection (1),

"motor vehicle liability policy" has the same meaning as in the *Insurance Act.*